



RES JUDICATA IN INTERNATIONAL COMMERCIAL ARBITRATION: TOWARDS AN AUTONOMOUS APPROACH AND IMPLEMENTATION IN UZBEK LAW

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ABOUT ARTICLE

Key words: res judicata, re-litigation, issue estoppel, abuse of process, identity of parties, cause of action, the triple identity test, international arbitration, conflict-of-laws, public policy, Uzbekistan.

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Abstract: The doctrine of res judicata, a fundamental principle ensuring the finality of judicial decisions, has become increasingly significant in international commercial arbitration as cross-border disputes proliferate and arbitration emerges as the preferred dispute resolution mechanism. This paper examines the application of res judicata to international arbitral awards, analyzing the tension between traditional domestic law approaches and emerging autonomous transnational principles. Through a comprehensive review of contemporary scholarship and arbitral practice, this research demonstrates that the current reliance on domestic law through conflict-of-laws analysis produces unpredictability and inconsistency, undermining the efficiency and certainty that parties seek in arbitration. The paper advocates for an autonomous approach grounded in party autonomy and arbitrators' inherent powers, proposing broad preclusive effects that encompass claim preclusion, issue preclusion, and abuse of process doctrines. The final section explores the implementation of these principles within Uzbekistan's evolving legal framework, offering recommendations for legislative reform and judicial practice to align Uzbek arbitration law with international best

practices while respecting the country's civil law tradition.

XALQARO TIJORAT ARBITRAJIDA RES JUDICATA PRINSIPI: AVTONOM YONDASHUVNI SHAKLLANTIRISH VA UNI O‘ZBEKISTON QONUNCHILIGIGA JORIY ETISH SARI

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MAQOLA HAQIDA

Kalit so‘zlar: res judicata, qayta sudlashish, issue estoppel, jarayonni suiiste'mol qilish, taraflarning shaxsiyati, da'vo asosi, uch tomonlama shaxsiyatni aniqlash testi, xalqaro arbitraj, kolliziyon normalar, ommaviy tartib, O'zbekiston.

Annotatsiya: Sud qarorlarining yakuniyligini ta'minlaydigan asosiy tamoyil bo'lgan res judicata doktrinasi, transchegaraviy nizolar ko'payib borayotgani va arbitraj nizolarni hal qilishning afzal mexanizmi sifatida paydo bo'lgani sababli, xalqaro tijorat arbitrajida tobora muhim ahamiyat kasb etmoqda. Ushbu maqolada res judicataning xalqaro arbitraj qarorlariga qo'llanilishi ko'rib chiqiladi, an'anaviy ichki huquq yondashuvlari va paydo bo'layotgan avtonom transmilliy tamoyillar o'rtasidagi ziddiyat tahlil qilinadi. Zamonaviy ilmiy va arbitraj amaliyotini har tomonlama ko'rib chiqish orqali ushbu tadqiqot kolliziyon normalarni tahlil qilish orqali ichki qonunchilikka tayanish noaniqlik va nomuvofiqlikni keltirib chiqarishini, tomonlar arbitrajda izlayotgan samaradorlik va aniqlikka putur yetkazishini ko'rsatadi. Maqolada taraflar muxtoriyati va arbitrlarning vakolatlariga asoslangan avtonom yondashuv qo'llab-quvvatlanadi, "claim preclusion", "issue preclusion" va jarayonni suiiste'mol qilish doktrinalarini o'z ichiga olgan keng qamrovli ta'sirlarni taklif qiladi. Yakuniy bo'limda ushbu tamoyillarning O'zbekistonning rivojlanayotgan qonunchilik bazasida amalga oshirilishi o'rganiladi, O'zbekiston arbitraj qonunchiligini mamlakatning fuqarolik huquqi an'alariga hurmat bilan qaragan holda xalqaro eng yaxshi amaliyotlar bilan uyg'unlashtirish uchun qonunchilik islohoti va sud amaliyoti bo'yicha tavsiyalar beriladi.

ПРИНЦИП RES JUDICATA В МЕЖДУНАРОДНОМ КОММЕРЧЕСКОМ АРБИТРАЖЕ: К ФОРМИРОВАНИЮ АВТОНОМНОГО ПОДХОДА И ЕГО ВНЕДРЕНИЮ В ЗАКОНОДАТЕЛЬСТВО УЗБЕКИСТАНА

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О СТАТЬЕ

Ключевые слова: res judicata, повторное рассмотрение дела, принцип эстоппеля, злоупотребление процессуальными правами, идентичность сторон, основание для иска, тест тройной идентичности, международный арбитраж, коллизионное право, публичный порядок, Узбекистан.

Аннотация: Доктрина res judicata, основополагающий принцип, гарантирующий окончательность судебных решений, приобретает все большее значение в международном коммерческом арбитраже по мере роста трансграничных споров и превращения арбитража в предпочтительный механизм разрешения споров. В данной статье рассматривается применение принципа res judicata к международным арбитражным решениям, анализируется противоречие между традиционными подходами национального права и формирующимися автономными транснациональными принципами. На основе всестороннего обзора современных научных исследований и арбитражной практики данное исследование демонстрирует, что нынешняя опора на национальное право посредством коллизионного анализа порождает непредсказуемость и непоследовательность, подрывая эффективность и определенность, к которым стремятся стороны в арбитраже. В статье отстаивается автономный подход, основанный на автономии сторон и неотъемлемых полномочиях арбитров, предлагаются широкие преюдициальные последствия, охватывающие доктрины преюдиции, преюдиции по вопросам и злоупотребления процессуальными правами. В заключительном разделе рассматривается применение этих

принципов в развивающейся правовой системе Узбекистана, предлагаются рекомендации по законодательной реформе и судебной практике для приведения арбитражного права Узбекистана в соответствие с передовой международной практикой при уважении традиций гражданского права страны.

The principle of *res judicata*, derived from the Latin maxim "*res judicata pro veritate accipitur*" (a matter adjudged is taken as true), serves dual purposes in legal systems worldwide: protecting the public interest in ending litigation to ensure legal certainty and efficient judicial functioning, while safeguarding parties from the burden and risk of repeated litigation on the same matter (Brozolo & Ponzano, 2024). In the context of international commercial arbitration, where parties from diverse legal backgrounds deliberately choose arbitration as an alternative to national courts, the application of *res judicata* to arbitral awards has become a matter of considerable theoretical and practical importance.

The exponential growth of international commercial arbitration over the past three decades has brought with it increasing complexity. Modern commercial transactions regularly involve multiple parties, contracts, and jurisdictions, leading to disputes that may be litigated or arbitrated in multiple fora (Schaffstein, 2012). In such circumstances, questions regarding the preclusive effects of prior arbitral awards or court judgments inevitably arise before subsequent arbitral tribunals. Yet despite the general acceptance that *res judicata* applies to international arbitral awards, there exists little agreement on how the principle should be applied, what law governs its scope, and what specific tests or standards arbitrators should employ (Brozolo & Ponzano, 2024).

This lack of consensus creates significant uncertainty for parties and arbitrators alike. The traditional approach, which applies domestic law through conflict-of-laws analysis, has proven inadequate due to fundamental differences among national legal systems regarding the scope and requirements of *res judicata* (Prager et al., 2024). Common law jurisdictions typically recognize broad preclusive effects through doctrines such as cause of action estoppel, issue estoppel, and abuse of process, while civil law systems have historically adopted narrower conceptions focused on the identity of claims and causes of action (Schaffstein, 2012). This divergence, combined with inconsistent choice-of-law methodologies, produces unpredictable outcomes that undermine the efficiency, finality, and party expectations that constitute arbitration's core advantages.

Nonetheless, a group of scholars and practitioners advocating for an autonomous or transnational approach to *res judicata* in international arbitration, one that dispenses with domestic law and instead applies principles specifically tailored to arbitration's unique characteristics and needs (Brozolo & Ponzano, 2024; Prager et al., 2024; Schaffstein, 2012). This paper examines the theoretical foundations and practical implications of such an approach, ultimately arguing that autonomous *res judicata* principles grounded in party autonomy and arbitrators' inherent powers offer the most coherent and effective solution to current challenges.

Theoretical Foundations of Res Judicata

The doctrine of *res judicata* is recognized as a general principle of both national and international law, reflecting fundamental values that transcend particular legal systems (Lanser, 2019). At its core, the principle embodies two complementary rationales: a public interest in finality and judicial efficiency, and a private interest in protecting parties from vexatious re-litigation. These dual foundations provide the normative justification for according preclusive effects to final decisions, whether rendered by courts or arbitral tribunals.

The public interest dimension of *res judicata* serves several critical functions. First, it promotes legal certainty by ensuring that disputes, once authoritatively resolved, remain settled and do not generate endless cycles of litigation (Brozolo & Ponzano, 2024). This certainty is essential for commercial planning and the stability of legal relationships, particularly in international transactions where parties must coordinate activities across multiple jurisdictions. Second, *res judicata* conserves judicial and arbitral resources by preventing the wasteful duplication of proceedings on matters already decided (Schaffstein, 2012). Third, it protects the integrity and credibility of dispute resolution systems by preventing contradictory decisions on the same matter, which would undermine public confidence in the administration of justice (Lanser, 2019).

The private interest dimension focuses on the parties' legitimate expectations and rights. When parties submit a dispute to arbitration, they invest significant time, expense, and effort in the proceedings, expecting that the resulting award will definitively resolve their controversy (Ezurmendia, 2020). *Res judicata* protects this investment by shielding parties from the burden, cost, and uncertainty of defending against repeated claims on matters already adjudicated. It also prevents strategic abuse, where a losing party might seek to relitigate in hopes of obtaining a more favorable outcome from a different tribunal (Brozolo, 2024).

In the specific context of international arbitration, these theoretical foundations acquire additional significance. When parties choose arbitration through an arbitration agreement, they

deliberately confer jurisdiction on arbitrators and exclude, in principle, review by national courts (Lanser, 2019). This choice reflects a determination to establish a single, binding dispute resolution mechanism as an alternative to ordinary courts. The finality and binding effects of arbitral awards are prescribed in institutional arbitration rules worldwide, and by agreeing to arbitrate under such rules, parties are presumed to accept the *res judicata* effect of any valid award (Lanser, 2019).

Moreover, the principle of party autonomy, a cornerstone of international arbitration provides a contractual foundation for *res judicata*. Parties' arbitration agreements typically incorporate provisions establishing the finality and binding nature of awards, either explicitly or through reference to institutional rules (Brozolo, 2024). These contractual commitments create legitimate expectations that disputes will be resolved definitively, without the possibility of re-litigation. Arbitrators' inherent powers to conduct proceedings efficiently and render effective awards further support the application of *res judicata*, as tribunals must have authority to prevent abusive re-litigation that would undermine the arbitral process (Brozolo & Ponzano, 2024).

The theoretical foundations of *res judicata* in international law thus rest on a combination of public policy considerations, private party expectations, contractual commitments, and the inherent requirements of effective dispute resolution. These foundations provide the normative basis for according preclusive effects to international arbitral awards, while also suggesting that the specific contours of *res judicata* in arbitration should be shaped by arbitration's distinctive characteristics rather than by analogy to domestic litigation.

The Conflict Between Domestic Law and Autonomous Approaches

The application of *res judicata* to international arbitral awards has traditionally followed a domestic law approach, whereby tribunals determine the preclusive effects of prior awards or judgments by applying the law of a particular jurisdiction selected through conflict-of-laws analysis (Schaffstein, 2012). This approach treats *res judicata* as a procedural or substantive issue governed by national law, typically the law of the seat of arbitration, the law governing the arbitration agreement, or the law applicable to the merits of the dispute. However, this traditional methodology has proven deeply problematic, generating significant uncertainty, inconsistency, and outcomes poorly suited to international arbitration's needs.

The fundamental challenge with the domestic law approach lies in the profound differences among national legal systems regarding the scope, requirements, and effects of *res judicata*. Common law and civil law jurisdictions have developed distinct doctrinal frameworks that reflect different procedural traditions and policy priorities (Schaffstein, 2012).

Common law systems, exemplified by England and the United States, recognize broad preclusive effects through several related doctrines. Cause of action estoppel prevents parties from relitigating claims that were or could have been raised in prior proceedings. Issue estoppel (or collateral estoppel) precludes re-litigation of specific issues of fact or law that were actually decided and necessary to the prior judgment. The doctrine of abuse of process provides additional flexibility to prevent vexatious or oppressive litigation even where technical requirements of estoppel are not met (Ezurmendia, 2020).

These doctrines collectively ensure that prior decisions have extensive preclusive effects, covering not only matters actually decided but also matters that could or should have been raised. Some argue for a nuanced approach in applying issue estoppel and abuse of process to prevent unjust re-litigation in enforcement proceedings related to international arbitral awards. Balancing consistency, justice, and finality in the context of differing national laws and public policies is essential for effective enforcement mechanisms (Nazzini, 2018).

Civil law systems have historically adopted narrower conceptions of *res judicata*, typically requiring strict identity of parties, cause of action, and object (the triple identity test) before according preclusive effects (Schaffstein, 2012). Many civil law jurisdictions limit *res judicata* to the dispositive part of judgments, excluding the reasoning, and do not recognize issue preclusion as a distinct doctrine. This narrower approach reflects civil law procedural traditions emphasizing party control over claims and a more restrictive view of judicial authority to foreclose future litigation.

These divergent approaches produce dramatically different outcomes when applied to the same factual scenario. A tribunal applying English law might find that a prior award precludes re-litigation of issues that were implicitly decided or could have been raised, while a tribunal applying French or German law might reach the opposite conclusion based on a strict application of the triple identity test (Prager et al., 2024). This unpredictability undermines parties' ability to assess the preclusive effects of awards and plan their litigation strategy accordingly.

Even if domestic laws were uniform, the domestic law approach would still generate uncertainty due to inconsistent choice-of-law methodologies. Arbitral tribunals have applied widely varying criteria to determine which domestic law governs *res judicata*, including the law of the seat of the prior arbitration, the law of the seat of the subsequent arbitration, the law governing the arbitration agreement, the law applicable to the merits, and the law of the place where recognition or enforcement is sought (Prager et al., 2024). Tribunals often fail to provide

clear reasoning for their choice-of-law decisions, and there is no consensus on which connecting factor is most appropriate.

This inconsistency is compounded by the fact that different choice-of-law rules may point to different applicable laws, and tribunals may characterize *res judicata* differently (as procedural, substantive, or mixed) depending on the legal tradition from which they approach the issue (Schaffstein, 2012). The result is a high degree of unpredictability regarding which domestic law will ultimately govern, adding a layer of uncertainty beyond the substantive differences among domestic laws themselves.

A more fundamental objection to the domestic law approach is that domestic *res judicata* rules have been developed in the context of national court litigation and are not necessarily appropriate for international arbitration (Prager et al., 2024). Arbitration differs from litigation in several critical respects: it is consensual rather than compulsory, private rather than public, and operates within a transnational rather than purely national framework. Domestic *res judicata* rules reflect policy choices and procedural assumptions specific to national court systems, including considerations of judicial hierarchy, appellate review, and the relationship between courts and other state institutions.

Applying these rules mechanically to international arbitration ignores arbitration's distinctive characteristics and may produce outcomes inconsistent with parties' legitimate expectations and arbitration's core values (Brozolo, 2024). For example, domestic rules limiting *res judicata* to the dispositive part of judgments may reflect assumptions about appellate review that do not apply in arbitration, where awards are generally not subject to substantive review. Similarly, domestic rules regarding the scope of claims may reflect procedural requirements specific to national court systems that parties have deliberately avoided by choosing arbitration.

Proponents of the domestic law approach sometimes argue that public policy considerations can serve as a safety valve, allowing tribunals to refuse application of domestic law rules that would produce manifestly unjust results (Brozolo & Ponzano, 2024). However, this argument rests on a flawed premise: that *res judicata* rules are inherently matters of public policy. In reality, while the general principle of *res judicata* may reflect public policy, the specific scope and requirements of *res judicata* in any given legal system represent technical procedural choices that are not necessarily matters of fundamental public policy (Brozolo & Ponzano, 2024).

Moreover, relying on public policy as a corrective mechanism introduces additional uncertainty and unpredictability, as tribunals may disagree about what constitutes a violation of public policy. This approach also fails to address the underlying problem: that domestic law rules

are simply not designed for international arbitration and should not be the starting point for analysis.

The inadequacies of the domestic law approach have led a growing number of scholars and practitioners to advocate for an autonomous or transnational approach that dispenses with domestic law and instead applies principles specifically tailored to international arbitration's needs and characteristics (Brozolo & Ponzano, 2024; Prager et al., 2024; Schaffstein, 2012). The next section examines the case for such an approach.

The Case for an Autonomous Approach to Arbitral Res Judicata

The autonomous approach to res judicata in international arbitration represents a shift from traditional conflict-of-laws methodology to a system of transnational principles specifically designed for arbitration. This approach is grounded in three primary legal bases: party autonomy, arbitrators' inherent powers, and the distinctive nature of international arbitration as a transnational dispute resolution mechanism.

Party autonomy is widely recognized as the cornerstone of international arbitration, and it provides the most compelling foundation for an autonomous approach to res judicata (Brozolo, 2024). When parties enter into an arbitration agreement, they typically incorporate provisions, either explicitly or through reference to institutional rules, establishing that awards shall be "final and binding" on the parties. These contractual commitments create legitimate expectations regarding the preclusive effects of awards.

An autonomous approach respects party autonomy by giving effect to these finality provisions according to their natural meaning, rather than subjecting them to the vagaries of domestic law through conflict-of-laws analysis (Brozolo & Ponzano, 2024). Parties choosing international arbitration generally expect that awards will have broad preclusive effects consistent with international arbitration practice, not effects that vary unpredictably depending on which domestic law a subsequent tribunal happens to select. By applying autonomous principles, arbitrators honor the parties' contractual bargain and their reasonable expectations regarding finality.

Moreover, parties' choice of arbitration itself reflects a decision to opt out of national court systems and their procedural rules. Applying domestic res judicata rules through conflict-of-laws analysis effectively reintroduces domestic law through the back door, undermining the parties' choice of a transnational dispute resolution mechanism (Brozolo, 2024). An autonomous approach

better respects the parties' decision to resolve disputes through international arbitration rather than national litigation.

Even in the absence of explicit contractual provisions on *res judicata*, arbitrators possess inherent powers to conduct proceedings efficiently and render effective awards (Brozolo, 2024). These inherent powers include the authority to prevent abusive litigation tactics and ensure the integrity of the arbitral process. Allowing parties to relitigate matters already decided in prior arbitrations would undermine arbitrators' ability to fulfill their mandate and would constitute an abuse of the arbitral process.

The concept of inherent powers is well-established in international arbitration and has been invoked to support various procedural decisions not explicitly addressed in applicable rules or agreements (Brozolo & Ponzano, 2024). Applying autonomous *res judicata* principles falls squarely within this framework, as it is necessary to prevent abuse and ensure that arbitration functions effectively as a dispute resolution mechanism. Arbitrators need not look to domestic law for authority to accord preclusive effects to prior awards when such authority flows from their inherent powers to manage proceedings and prevent vexatious re-litigation.

International arbitration operates within a transnational legal framework that transcends individual national legal systems (Schaffstein, 2012). This framework includes international conventions (such as the New York Convention), institutional arbitration rules, general principles of international law, and a body of arbitral jurisprudence and practice that has developed independently of any single domestic legal system. Within this framework, it is both appropriate and necessary to develop transnational principles for issues that arise regularly in international arbitration, including *res judicata*.

An autonomous approach recognizes that international arbitration has evolved into a distinct legal order with its own principles and practices (Lanser, 2019). Just as arbitrators routinely apply transnational principles to substantive issues (such as good faith, estoppel, and unjust enrichment) without resorting to domestic law, they can apply transnational principles to *res judicata*. This approach promotes uniformity, predictability, and coherence in international arbitration practice, facilitating the development of a consistent body of jurisprudence that parties and arbitrators can rely upon.

The autonomous approach offers several significant advantages over the domestic law approach. First, it promotes predictability by establishing consistent principles that apply regardless of the seat of arbitration or other connecting factors (Prager et al., 2024). Parties can

assess the preclusive effects of awards based on transnational principles rather than engaging in complex and uncertain conflict-of-laws analysis.

Second, the autonomous approach enhances efficiency by according broad preclusive effects to awards, thereby preventing wasteful re-litigation and encouraging parties to raise all relevant claims and issues in a single proceeding (Brozolo & Ponzano, 2024). This efficiency serves both parties' private interests and the public interest in conserving arbitral resources.

Third, an autonomous approach better serves the legitimate expectations of parties who choose international arbitration, as it applies principles specifically tailored to arbitration rather than rules designed for domestic court litigation (Brozolo, 2024). This alignment between principles and context produces outcomes more consistent with arbitration's core values of finality, efficiency, and party autonomy.

Fourth, the autonomous approach facilitates the development of a coherent body of arbitral jurisprudence on *res judicata*, as tribunals can build on prior decisions applying transnational principles rather than navigating the complexities of multiple domestic legal systems (Schaffstein, 2012). This jurisprudential development enhances the maturity and sophistication of international arbitration as a legal field.

Scope and Elements of Res Judicata in International Arbitration

Having established the case for an autonomous approach, it is necessary to define the specific scope and elements of *res judicata* in international arbitration. This section examines the key components of an autonomous *res judicata* framework, drawing on the International Law Association (ILA) Recommendations, recent scholarship, and emerging arbitral practice.

The traditional starting point for *res judicata* analysis is the triple identity test, which requires identity of parties, cause of action, and object between the prior and subsequent proceedings (Schaffstein, 2012). This test, derived from civil law systems, provides a useful framework for determining when preclusive effects should apply, though it requires adaptation for the international arbitration context.

Identity of Parties: The requirement of identity of parties ensures that *res judicata* applies only between the same parties (or their privies) who participated in the prior proceedings. This requirement reflects the consensual nature of arbitration and the principle that parties should not be bound by decisions in proceedings to which they were not party (Lanser, 2019). However, the concept of "identity" should be interpreted pragmatically to include successors in interest, assignees, and parties in privity relationships, recognizing that commercial relationships often involve complex corporate structures and contractual arrangements.

Identity of Cause of Action: The requirement of identity of cause of action focuses on the legal basis for the claim. In an autonomous approach, this requirement should be interpreted flexibly to encompass claims arising from the same factual matrix or transaction, even if they invoke different legal theories or seek different forms of relief (Brozolo & Ponzano, 2024). A rigid, formalistic interpretation would allow parties to evade *res judicata* by simply recharacterizing their claims, undermining the doctrine's purposes.

Identity of Object: The requirement of identity of object concerns the relief or remedy sought. Again, a pragmatic interpretation is appropriate: if the object of the subsequent claim is substantially the same as that of the prior claim, *res judicata* should apply even if the specific form of relief differs (Prager et al., 2024). The focus should be on whether the subsequent claim seeks to relitigate the same essential controversy rather than on technical differences in the relief requested.

Claim preclusion (or cause of action estoppel) prevents parties from relitigating claims that were actually decided in prior proceedings, as well as claims that could or should have been raised (Brozolo, 2024). This broad preclusive effect serves efficiency by encouraging parties to consolidate all related claims in a single proceeding and prevents strategic splitting of claims.

In the international arbitration context, claim preclusion should apply to bar subsequent claims that arise from the same transaction or occurrence as the prior arbitration, even if they were not actually raised (Brozolo & Ponzano, 2024). This approach, consistent with common law principles, promotes efficiency and prevents abuse. However, claim preclusion should not apply where the prior tribunal lacked jurisdiction over the subsequent claim or where the parties' arbitration agreement clearly contemplated separate proceedings for different aspects of their dispute.

Issue preclusion (or issue estoppel) prevents re-litigation of specific issues of fact or law that were actually decided and necessary to the prior award (Ezurmendia, 2020). This doctrine extends *res judicata* beyond the dispositive part of awards to encompass the reasoning and findings underlying the decision. Issue preclusion serves efficiency by preventing duplicative litigation of issues already resolved and promotes consistency by preventing contradictory findings on the same issue.

An autonomous approach should recognize issue preclusion as a distinct component of *res judicata* in international arbitration, covering issues that were expressly decided as well as issues that were necessarily implied by the award (Brozolo & Ponzano, 2024). However, issue preclusion should apply only where the issue was actually litigated and decided, not where it was conceded

or decided by default. Additionally, issue preclusion should not apply where the prior tribunal's decision on the issue was not necessary to the award or where changed circumstances or new evidence warrant reconsideration.

The doctrine of abuse of process provides flexibility to prevent vexatious or oppressive re-litigation even where the technical requirements of claim or issue preclusion are not met (Lanser, 2019). This doctrine recognizes that rigid application of *res judicata* tests may sometimes allow parties to evade the spirit of the doctrine through strategic manipulation of procedural rules.

In international arbitration, abuse of process should be available to prevent re-litigation where allowing the subsequent claim would be manifestly unfair or inconsistent with the parties' legitimate expectations of finality (Brozolo, 2024). This might include situations where a party deliberately withheld claims or issues from the prior arbitration with the intention of relitigating if the outcome was unfavorable, or where the subsequent claim is merely a disguised attempt to appeal or relitigate the prior award.

A critical question concerns whether *res judicata* extends only to the dispositive part of awards or also encompasses the reasoning. Civil law systems have traditionally limited *res judicata* to the dispositive part, while common law systems accord preclusive effects to the reasoning through issue estoppel (Schaffstein, 2012).

An autonomous approach should adopt the broader common law position, according preclusive effects to both the dispositive part and the essential reasoning of awards (Brozolo & Ponzano, 2024). This approach better serves the purposes of *res judicata* by preventing re-litigation of issues actually decided and promotes efficiency by giving full effect to the tribunal's work. However, preclusion should extend only to findings that were necessary to the award, not to *obiter dicta* or alternative holdings.

Comparative Perspectives: Common Law and Civil Law Convergence

While common law and civil law systems have historically diverged in their approaches to *res judicata*, recent developments suggest a convergence that facilitates the development of autonomous transnational principles (Cavallini & Ariano, 2021). This convergence reflects evolving procedural values and increasing cross-fertilization between legal traditions in the context of international dispute resolution.

Several civil law jurisdictions have expanded the scope of *res judicata* in recent decades, moving closer to common law positions (Prager et al., 2024). For example, French law has increasingly recognized preclusive effects beyond the strict dispositive part of judgments, and German law has developed doctrines analogous to issue preclusion in certain contexts. Swiss law,

particularly influential in international arbitration, has adopted relatively broad conceptions of res judicata that encompass issues necessarily decided in prior proceedings.

This evolution reflects recognition that narrow conceptions of res judicata may be inefficient and may fail to serve the legitimate interests of parties and the judicial system (Brozolo & Ponzano, 2024). As civil law systems have confronted increasing caseloads and demands for efficiency, they have adopted procedural reforms that expand preclusive effects and encourage comprehensive resolution of disputes. These reforms narrow the gap between civil law and common law approaches, facilitating the development of transnational principles that draw on both traditions.

Common law systems, while generally recognizing broad preclusive effects, have also demonstrated flexibility in adapting res judicata doctrines to different contexts (Ezurmendia, 2020). English law, for example, has developed nuanced approaches to issue estoppel that balance finality against fairness, recognizing exceptions where changed circumstances or new evidence warrant reconsideration. American law has similarly refined its preclusion doctrines to address complex litigation scenarios involving multiple parties and claims.

This flexibility suggests that common law principles can be adapted to the international arbitration context without rigid adherence to domestic procedural rules (Prager et al., 2024). The underlying values of efficiency, finality, and fairness that animate common law preclusion doctrines are equally applicable in arbitration, even if specific technical requirements may need adjustment.

Common law experts argue that the shield of res judicata, while crucial, may be less reliable than commonly believed. Understanding the limitations of res judicata is vital for practitioners to assess arbitration risks accurately and acknowledge that awards may not always resolve disputes definitively, especially when appeal options are limited (Ghosh, 2015).

The convergence between common law and civil law approaches creates an opportunity for synthesis in international arbitration. An autonomous approach can draw on the strengths of both traditions: the civil law's emphasis on party control and the triple identity test as a framework for analysis, combined with the common law's recognition of broad preclusive effects through claim preclusion, issue preclusion, and abuse of process (Brozolo & Ponzano, 2024).

This synthesis is reflected in the ILA Recommendations on Res Judicata and Arbitration, which adopt the triple identity test while also recognizing issue preclusion and abuse of process (Schaffstein, 2012). The Recommendations represent an attempt to formulate transnational principles that are acceptable to practitioners from both legal traditions and that serve the specific needs of international arbitration. While the Recommendations have been criticized for not going

far enough in certain respects, they provide a useful starting point for the development of autonomous principles.

Practical Challenges and Institutional Responses

Despite the theoretical and normative case for an autonomous approach to *res judicata* in international arbitration, significant practical challenges remain. This section examines these challenges and considers how arbitral institutions and soft-law bodies can facilitate the adoption of autonomous principles.

One significant challenge is arbitrator reluctance to depart from traditional domestic law approaches. Many arbitrators, trained in national legal systems and concerned about potential challenges to awards, may be hesitant to apply autonomous principles without clear authority (Brozolo, 2024). This conservatism is understandable but ultimately counterproductive, as it perpetuates the uncertainty and inconsistency that the autonomous approach seeks to address.

Overcoming this reluctance requires education and the development of a critical mass of arbitral jurisprudence applying autonomous principles (Prager et al., 2024). As more tribunals adopt autonomous approaches and as awards applying such approaches are recognized and enforced without difficulty, arbitrators will gain confidence in the legitimacy and acceptability of this methodology.

The success of an autonomous approach depends on acceptance by key stakeholders, including parties, counsel, arbitrators, and national courts (Prager et al., 2024). Parties and counsel must be willing to argue for autonomous principles, arbitrators must be willing to apply them, and courts must be willing to recognize and enforce awards based on them.

Building stakeholder acceptance requires demonstrating that autonomous principles serve parties' interests better than domestic law approaches by providing greater predictability, efficiency, and alignment with arbitration's core values (Brozolo & Ponzano, 2024). It also requires showing that autonomous principles are grounded in legitimate legal bases, party autonomy and inherent powers, rather than representing arbitrary departures from established law.

Arbitral institutions can play a crucial role in facilitating the adoption of autonomous *res judicata* principles by incorporating provisions on the preclusive effects of awards in their rules (Brozolo, 2024). Such provisions could establish that awards rendered under the institution's rules shall have specified preclusive effects in subsequent arbitrations under the same rules, providing clear contractual authority for autonomous principles.

Several institutions have begun to address *res judicata* in their rules or practice notes, though comprehensive provisions remain rare (Prager et al., 2024). The development of model provisions

or best practices by leading institutions could significantly advance the adoption of autonomous principles by providing clear guidance to arbitrators and parties.

Soft-law bodies such as the International Bar Association (IBA) and the International Law Association (ILA) can contribute to the development of autonomous *res judicata* principles through guidelines, recommendations, and model rules (Prager et al., 2024). The ILA Recommendations, while now nearly two decades old, represent an important early effort in this direction. The IBA Arbitration Committee's recent Task Force on *Res Judicata* in International Arbitration has recommended developing updated guidelines on autonomous *res judicata* standards, recognizing both the possibility and desirability of such an initiative.

These soft-law initiatives serve multiple functions: they synthesize emerging best practices, provide guidance to arbitrators and parties, facilitate the development of consensus around core principles, and lend legitimacy to autonomous approaches by demonstrating broad professional support (Brozolo & Ponzano, 2024). While soft-law instruments are not binding, they can significantly influence arbitral practice and contribute to the gradual development of transnational norms.

Practical considerations also suggest that autonomous principles should initially focus on core issues where consensus is most achievable, rather than attempting to address every aspect of *res judicata* comprehensively (Prager et al., 2024). The IBA Task Force, for example, recommends that guidelines should initially focus on the objective scope of *res judicata* (claim and issue preclusion) in commercial arbitration between the same parties, while deferring more controversial issues such as the identity of parties requirement and the application of *res judicata* in investment arbitration.

This incremental approach recognizes that building consensus takes time and that attempting to resolve all issues at once may result in guidelines that are too controversial to gain broad acceptance (Prager et al., 2024). By focusing on areas where convergence is most advanced and where the need for guidance is most acute, soft-law initiatives can make meaningful progress while leaving more difficult issues for future development.

Implementation of *Res Judicata* Principles in Uzbek Law

Uzbekistan's legal system, rooted in the civil law tradition, is undergoing significant modernization as the country seeks to attract foreign investment and integrate into the global economy. The development of an effective arbitration framework, including clear principles on *res judicata* is essential to this modernization effort. This section examines the current state of

Uzbek law on *res judicata* in arbitration and offers recommendations for implementing international best practices while respecting Uzbekistan's legal traditions.

Uzbekistan's international arbitration law is primarily governed by the Law on International Commercial Arbitration (2021) (ICA Law), which was modeled on the UNCITRAL Model Law on International Commercial Arbitration (Model Law). The law establishes the basic framework for international arbitration, including provisions on the formation of arbitral tribunals, arbitral procedure and the recognition and enforcement of awards.

The ICA Law does not contain explicit provisions addressing the *res judicata* effects of arbitral awards in subsequent proceedings. Articles 48 and 51 provide that arbitral awards are "final and binding" on the parties, but this provision does not specify the scope of preclusive effects or provide guidance on how tribunals should determine whether a prior award bars subsequent claims or issues. This gap in the legislation creates uncertainty and leaves tribunals without clear guidance on applying *res judicata* principles.

The Economic Procedure Code (EPC) contains provisions on *res judicata* applicable to the arbitral awards. Arbitration award issued in a dispute between the same parties, on the same subject matter and on the same grounds serves as a ground for the rejection of a claim (Article 154) and termination of the court proceedings (Article 110). These provisions reflect the narrow civil law conception of *res judicata* based on the triple identity test. The applicability of these provisions to the arbitral awards needs further research as there are no reported cases on this matter publicly available yet.

Several challenges complicate the implementation of modern *res judicata* principles in Uzbekistan. First, the civil law tradition's emphasis on narrow conceptions of *res judicata* may create resistance to broader preclusive effects, particularly among judges and arbitrators. Second, the absence of a well-developed body of arbitral jurisprudence in Uzbekistan means that there are few court practices to guide tribunals in applying *res judicata* principles.

Additionally, Uzbekistan's courts play a supervisory role in arbitration through their jurisdiction over challenges to awards and applications for recognition and enforcement. If courts apply narrow domestic conceptions of *res judicata* when reviewing awards, they may undermine tribunals' efforts to apply broader autonomous principles thereby creating uncertainty about the enforceability of awards based on such principles.

To align Uzbek international arbitration law with international best practices, legislative reform should further address *res judicata* and provide clear guidance to arbitrators and courts. The following recommendations are offered:

Explicit Recognition of Res Judicata: The ICA Law could be amended to include explicit provisions recognizing that arbitral awards have res judicata effects in subsequent arbitral and judicial proceedings. These provisions should establish the basic principle that final awards preclude re-litigation of matters decided, while leaving specific applications to be developed through arbitral practice and judicial interpretation.

Adoption of Autonomous Principles: The amended ICA Law could authorize arbitral tribunals to apply autonomous transnational principles of res judicata rather than requiring application of domestic law through conflict-of-laws analysis. This authorization could be framed as a default rule, i.e. applicable unless parties agree otherwise, thereby respecting party autonomy while providing clear guidance in the absence of party agreement.

Scope of Preclusive Effects: The ICA Law could specify that res judicata extends to both the dispositive part of awards and the essential reasoning, encompassing both claim preclusion and issue preclusion. This provision would align Uzbek law with the emerging international consensus favoring broad preclusive effects and would prevent parties from evading res judicata through strategic recharacterization of claims or issues.

Triple Identity Test with Flexibility: The ICA Law could adopt the triple identity test (identity of parties, cause of action and object) as the basic framework for res judicata analysis, consistent with the civil law traditions. However, the ICA Law could also provide that these requirements should be interpreted pragmatically and flexibly, focusing on the substance of claims and issues rather than formal characterizations. This approach would balance respect for the civil law methodology with the need for effective preclusion.

Abuse of Process: The ICA Law could recognize abuse of process as a basis for preventing vexatious re-litigation, even where technical requirements of res judicata are not met. This provision would provide tribunals with flexibility to address strategic manipulation and ensure fairness.

Guidance for Courts: The Supreme Court of Uzbekistan could provide guidance to courts reviewing arbitral awards, clarifying that courts should respect tribunals' application of autonomous res judicata principles and should not substitute their own narrow conceptions of res judicata when reviewing awards. This provision would ensure that judicial review does not undermine the effectiveness of autonomous principles.

Beyond legislative reform, institutional development is essential to implementing effective res judicata principles in Uzbekistan. The Tashkent International Arbitration Centre (TIAC), established in 2018, provides an important platform for developing modern arbitration practices.

TIAC could consider incorporating provisions on *res judicata* in its arbitration rules, establishing clear standards for the preclusive effects of awards rendered under its auspices.

TIAC could also develop practice notes or guidelines on *res judicata*, drawing on the ILCA Recommendations and recent scholarship to provide practical guidance to arbitrators and parties. These materials could explain the rationale for autonomous principles, provide examples of their application, and address common questions and concerns. By taking a leadership role in this area, TIAC could position itself as a modern and sophisticated arbitral institution attractive to international parties.

Effective implementation of modern *res judicata* principles requires capacity building among Uzbek judges, arbitrators and lawyers. Training programs could be developed to familiarize legal professionals with autonomous approaches to *res judicata*, including the theoretical foundations, practical applications and comparative perspectives. These programs could be offered through TIAC, law schools, bar associations and international organizations active in Uzbekistan.

Educational materials could emphasize that autonomous principles are not foreign impositions but rather represent the natural evolution of *res judicata* doctrine in the context of international arbitration. By framing autonomous principles as consistent with fundamental values shared across legal systems (finality, efficiency and fairness) educational efforts can build acceptance and overcome resistance rooted in unfamiliarity.

Finally, implementing modern *res judicata* principles in Uzbekistan requires ongoing dialogue and cooperation between arbitrators and judges. Courts' deference for the rationale for autonomous principles and arbitrators sensitivity to courts' legitimate concerns about fairness and due process could serve for this goal. Regular forums for exchange between the arbitral and judicial communities, such as conferences, workshops and joint training programs can facilitate mutual understanding and build trust.

Uzbekistan's Supreme Court could also issue guidance or interpretive decisions clarifying the application of *res judicata* to arbitral awards and endorsing autonomous principles. Such guidance would provide authoritative support for tribunals applying autonomous approaches and would signal to the international community that Uzbekistan is committed to modern, internationally-aligned arbitration practices.

By pursuing legislative reform, institutional development, capacity building and judicial dialogue, Uzbekistan can implement effective *res judicata* principles that serve the needs of international commercial arbitration while respecting the country's civil law traditions. This

implementation would enhance Uzbekistan's attractiveness as a seat of arbitration and contribute to the country's broader economic goals.

Conclusion. The doctrine of *res judicata* plays a fundamental role in international commercial arbitration, ensuring finality, promoting efficiency and protecting parties' legitimate expectations. However, the traditional approach of applying domestic law through conflict-of-laws analysis has proven inadequate by generating unpredictability and inconsistency that undermine arbitration's core values. The divergence among national legal systems regarding the scope and requirements of *res judicata*, combined with inconsistent choice-of-law methodologies and the inappropriateness of domestic law analogies creates significant challenges for parties and arbitrators.

The autonomous approach which is grounded in party autonomy and arbitrators' inherent powers, offers a superior alternative. By applying transnational principles specifically tailored to international arbitration, this approach promotes predictability, efficiency and alignment with parties' expectations. The scope of autonomous *res judicata* should encompass claim preclusion, issue preclusion and abuse of process, applying the triple identity test flexibly and pragmatically. Recent convergence between common law and civil law systems facilitates the development of such principles, as reflected in the ILA Recommendations and emerging arbitral practice.

Practical challenges remain, including arbitrator conservatism and the need for stakeholder acceptance. However, these challenges can be addressed through institutional rules, soft-law guidelines, education and the gradual development of arbitral jurisprudence. Arbitral institutions and soft-law bodies have important roles to play in facilitating the adoption of autonomous principles by providing clearer guidance and building consensus.

For Uzbekistan, implementing modern *res judicata* principles represents both a challenge and an opportunity. EPC already recognizes *res judicata* effect of the arbitral awards. Further legislative reforms could authorize autonomous principles and provide clear guidance on its scope and application. Institutional development through TIAC, capacity building among legal professionals and judicial dialogue can support effective implementation. By aligning its arbitration law with international best practices while respecting its civil law traditions, Uzbekistan can enhance its attractiveness as a seat of arbitration.

The development of autonomous *res judicata* principles in international arbitration reflects the maturation of arbitration as a distinct legal field with its own norms and practices. As international commercial transactions continue to grow in complexity and volume, the need for clearer, predictable and effective *res judicata* principles will only increase. The autonomous

approach that draws on the best elements of both common law and civil law traditions and tailored to arbitration's unique characteristics, provides the framework for meeting this need. Through continued scholarly analysis, institutional innovation and practical application, the international arbitration community can develop a robust body of transnational *res judicata* principles that serve the interests of parties, arbitrators and the broader goal of effective international dispute resolution.

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