



Paris-Panthéon-Assas University
Comparative Law Institute

Second Year of Master's Degree in Comparative Business Law (2024–2025)

Under the direction of Professor Marie-Elodie Ancel

September 2025 Session

Anti-Suit Injunctions in Support of Arbitration
A Comparative Study of English and French Law Through the Lens of *UniCredit v*
RusChemAlliance

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Disclaimer

Paris-Panthéon-Assas University does not intend to express either approval or disapproval of the views expressed in this master's thesis; these views should be regarded as solely those of the author.

As part of the second year of the Master's Degree in Comparative Business Law, a research stay at a foreign university is required to support the preparation of the thesis. In the present case, the requirement was waived due to the ample availability of English law sources on the subject in the University's libraries and database subscriptions.

The thesis is written in English due to the predominance of English-language sources in the literature, case law and legislation consulted throughout the research process.

Abstract

This master's thesis explores the evolving role of anti-suit injunctions in international arbitration, with a comparative focus on English and French law. Anti-suit injunctions are judicial orders restraining parties from pursuing litigation in breach of an arbitration agreement. While traditionally viewed with scepticism in civil law jurisdictions, recent developments suggest a growing openness to their recognition — particularly when grounded in contractual obligations.

The study is structured in two parts. Part I examines the legal foundations and legitimacy of ASIs in both jurisdictions, tracing their historical development and assessing their compatibility with principles such as *compétence-compétence*, party autonomy, and international comity. Part II analyses the post-Brexit resurgence of ASIs in England through the lens of *UniCredit v. RusChemAlliance*, a landmark case in which the English Court of Appeal issued an ASI in support of an arbitration seated in Paris. The case raises critical questions about jurisdiction, the law applicable to the arbitration agreement, and the recognition of English ASIs by French courts.

Through a comparative methodology, the master's thesis highlights the doctrinal and philosophical divergences between England and Wales and France. It argues that while English courts assertively enforce arbitration agreements via anti-suit injunctions, French courts prioritise arbitral autonomy and judicial restraint. The study concludes that both approaches reflect distinct legal cultures and that managing these differences is essential to promoting effective cross-border arbitration in a fragmented legal landscape.

Keywords: Anti-suit injunctions; arbitration; comparative law; English law; French law; *UniCredit v. RusChemAlliance*; *compétence-compétence*; party autonomy; international comity; judicial intervention; Brexit; law applicable to arbitration agreement; enforcement of arbitration agreements.

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List of abbreviations

Abbreviation	Full Form / Meaning
ASI	Anti-suit injunction
CJEU	Court of Justice of the European Union
CPR	Civil Procedure Rules (England and Wales)
ECJ	European Court of Justice
EPC	Engineering Procurement and Construction
EU	European Union
ICC	International Chamber of Commerce
KC	King's Counsel
NYC	New York Convention
PD	Practice Direction (Civil Procedure Rules)
RCA	RusChemAlliance
TGI	Tribunal de Grande Instance (France)
UK	United Kingdom

Introduction

1. Arbitration has long stood as the cornerstone of international commercial dispute resolution. Its success lies in its neutrality, flexibility, and capacity to transcend national boundaries. As Pierre Mayer aptly observed, “*arbitrators do not rule in the name of a State, but in their own name, and are therefore not suspected of bias towards either party*”¹. This autonomy, coupled with the enforceability of arbitral awards under the New York Convention, has made arbitration the preferred mechanism for resolving complex cross-border disputes.
2. Yet, arbitration does not operate in isolation. It often requires the support of national courts, particularly when one party seeks to circumvent the arbitral process by initiating proceedings in a forum contrary to the arbitration agreement. In such cases, courts may issue anti-suit injunctions — orders restraining a party from pursuing litigation in breach of an arbitration clause. These injunctions, though formally addressed to the litigant and not the foreign court, have profound implications for the balance between arbitral autonomy and judicial sovereignty.
3. The anti-suit injunction is not a recent invention. As early as 1665, Lord Clarendon, then Lord Chancellor, warned in *Love v Baker* that restraining proceedings in Leghorn (Livorno) would be a “*dangerous case*”². His concern foreshadowed centuries of debate over the legitimacy of this remedy. In modern English law, the anti-suit injunction has evolved from a tool of equitable restraint into a robust mechanism for enforcing contractual commitments, including arbitration agreements. As Thomas Raphael KC notes, “*an anti-suit injunction, in its most typical form, orders a party to cease to pursue, or not to commence, court proceedings abroad. It is backed by the threat of punishment for contempt of court if it is not obeyed*”³.

¹ MAYER Pierre, *L'autonomie de l'arbitre international dans l'appréciation de sa propre compétence*, Recueil des cours de l'Académie de droit international de La Haye, vol. 217, 1989, p. 327.

² *Love v Baker* [1665] 1 Chan Cas 67, 22 ER 698.

³ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 1.

4. The use of anti-suit injunctions in support of arbitration has increased markedly in recent decades, particularly in common law jurisdictions. In England and Wales⁴, the landmark decision in *The Angelic Grace*⁵ established a presumption in favour of granting an injunction where foreign proceedings breach an arbitration clause. This assertive stance reflects a broader judicial policy of upholding party autonomy and preventing procedural abuse.
5. However, the trajectory of anti-suit injunctions in Europe has been shaped by a distinct regulatory framework. The Brussels I Regulation and the jurisprudence of the Court of Justice of the European Union imposed limitations on anti-suit injunctions within the EU, culminating in decisions such as *Turner v Grovit*⁶ and *West Tankers*⁷. These rulings effectively barred English courts from issuing ASIs against proceedings in other Member States. Brexit, however, has altered this dynamic. Since 1 January 2021, English courts are no longer bound by EU jurisdictional instruments, and have regained the ability to issue ASIs even against proceedings in EU Member States.
6. This shift has reignited interest in the remedy, particularly in cases involving arbitration agreements. The 2023 decision in *UniCredit v RusChemAlliance*⁸ exemplifies this trend. In that case, the English Court of Appeal granted an anti-suit injunction to restrain Russian proceedings in breach of an arbitration clause providing for ICC arbitration in Paris. The decision was notable not only for its extraterritorial reach, but also for its assertion of jurisdiction based on the governing law of the arbitration agreement —English law — even though the seat of arbitration was in France⁹.

⁴ For convenience, references to “England” throughout this master’s thesis include “England and Wales”.

⁵ *Aggeliki Charis Compania Maritima v Pagnan (The Angelic Grace)* [1995] 1 Lloyd’s Rep 87.

⁶ *Gregory Paul Turner v Felix Fareed Ismail Grovit, Harada Ltd and Changepoint SA*, Case C-159/02, Judgment of 27 April 2004, ECLI:EU:C:2004:228, [2004] ECR I-03565.

⁷ *Allianz SpA v West Tankers Inc (The Front Comor)*, Case C-185/07 [2009] ECR I-00663; ECLI:EU:C:2009:69.

⁸ *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30.

⁹ *UniCredit Bank AG v RusChemAlliance LLC* [2023] EWCA Civ 1144.

7. The *UniCredit* case has sparked debate among French scholars. As Jourdan-Marques provocatively asked, “[i]s French arbitration law so fragile that the English judge must come to its rescue?”¹⁰. This question underscores the tension between English pragmatism and French formalism in the judicial support of arbitration. While English courts assert jurisdiction to enforce arbitration agreements governed by English law, French courts remain cautious, relying on the principle of *compétence-compétence* and deferring to arbitral tribunals unless the clause is manifestly void.
8. Historically, French law has been sceptical of anti-suit injunctions, viewing them as incompatible with international comity and judicial sovereignty. The Cour de cassation’s decision in *Stolzenberg*¹¹ exemplified this stance, distinguishing ASIs from Mareva injunctions and refusing recognition on the grounds that ASIs interfere with the jurisdiction of foreign courts. However, recent jurisprudence suggests a more nuanced approach. In *In Zone Brands*¹², the Cour de cassation recognised a US anti-suit injunction enforcing an exclusive jurisdiction clause, holding that it was not contrary to international public policy. Similarly, in *Lenovo v IPCOM*¹³, the Paris Court of Appeal issued an anti-anti-suit injunction to protect the right of a patent holder to litigate in France.
9. These decisions reflect a gradual opening of French law to the recognition of anti-suit injunctions, particularly when they enforce contractual obligations rather than assert judicial supremacy. As Carriou, Debourg, and Lauvaux observe, “French law now exhibits a cautious interest in anti-suit injunctions, reflecting a process of legitimisation—at least in cases where the injunction protects a jurisdiction that has been contractually agreed”¹⁴.

¹⁰ JOURDAN-MARQUES Jérémy. *Le juge anglais, juge universel de l'arbitrage*. Paris: Dalloz Actualité, 2024, p. 1.

¹¹ *Wolfgang Stolzenberg c. Daimler Chrysler Canada Inc, CIBC Mellon Trust Company et Royal Trust Corporation of Canada*, Cass. civ. 1re, 30 juin 2004, n° 01-03.248 et 01-15.452, publié au bulletin.

¹² *In Beverage International SA et M. Lionel X c. In Zone Brands Inc.*, Cass. civ. 1re, 14 octobre 2009, n° 08-16.369 et 08-16.549, publié au bulletin.

¹³ *Lenovo (United States) Inc et al. c. IPCOM GmbH & Co. KG*, Paris, Cour d’appel, Pôle 5, chambre 16, 3 mars 2020, n° 19/21426.

¹⁴ CARRIOU Vincent, et al. Les injonctions anti-suit anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage* 2024, issue 1, pp. 285-328, para. 20.

10. This mémoire explores the legal foundations, practical implications, and comparative dimensions of anti-suit injunctions in support of arbitration. It focuses on ASIs issued by courts in favour of arbitration proceedings, especially those seated outside the issuing court's jurisdiction. The central question guiding this study is: *to what extent can national courts, particularly those of the seat or of third-party jurisdictions, intervene through anti-suit injunctions to safeguard arbitration, and how do the English and French legal systems reconcile such interventions with the principles of arbitral autonomy and international comity?*
11. To answer this question, the master's thesis adopts a comparative methodology, structured in two parts. As Konrad Zweigert and Hein Kötz explain, "*comparative law is not a mere juxtaposition of rules, but a method of understanding legal systems through their structure, function, and underlying values*"¹⁵. This approach allows for a deeper appreciation of how English and French courts conceptualise and apply anti-suit injunctions, and how these differences reflect broader legal philosophies.
12. Part I examines the legal foundation and legitimacy of anti-suit injunctions in English and French law. It traces the historical development of the remedy, its doctrinal underpinnings, and its compatibility with key principles of international arbitration, such as *compétence-compétence*, party autonomy, and comity.
13. Part II focuses on judicial intervention and the future of anti-suit injunctions post-Brexit, using the *UniCredit v RusChemAlliance* case as a lens. It analyses the jurisdictional reasoning of the English courts, the reception of the ASI in France, and the broader implications for cross-border arbitration. Particular attention is given to the law applicable to the arbitration agreement, the 2025 reform of the UK Arbitration Act, and the remedies available in France for breach of arbitration agreements.

¹⁵ ZWEIGERT Konrad, et al. *An Introduction to Comparative Law*. Oxford: Oxford University Press, 3rd ed., 1998, p. 15.

14. Through this comparative lens, the master's thesis seeks to illuminate the evolving role of anti-suit injunctions in international arbitration and to assess whether they serve as instruments of support or substitution. In doing so, it contributes to the ongoing dialogue between legal systems and offers insights into the future of judicial cooperation in a fragmented legal landscape.

Part I. Legal Foundation and Legitimacy of Anti-Suit Injunctions in Support of Arbitration in English and French Law

15. Part I begins by clarifying what anti-suit injunctions are and how they have developed in English and French law. Chapter 1 focuses on the nature and function of the remedy, tracing its historical roots and explaining how each legal system has shaped its understanding over time. Chapter 2 then moves from theory to practice, examining how courts in both jurisdictions apply anti-suit injunctions in support of arbitration. Together, these chapters provide the legal and doctrinal background needed to understand the issues raised in Part II, where the UniCredit case brings these differences into sharp focus.

CHAPTER 1. THE CONCEPTUAL AND HISTORICAL UNDERSTANDING OF ANTI-SUIT INJUNCTIONS IN ENGLISH AND FRENCH LAW

16. Chapter 1 opens with a closer look at the nature and function of anti-suit injunctions in arbitration. Section 1 defines the remedy and outlines how it operates, particularly in the context of international disputes. Section 2 then traces its historical development in English and French law, showing how each legal tradition has shaped its understanding of the remedy over time.

Section 1. The nature and function of anti-suit injunctions in arbitration

17. Section 1 begins by defining what anti-suit injunctions are in the context of arbitration and how they operate in practice. Paragraph 1 focuses on the terminology, scope, and procedural features of the remedy in English law. Paragraph 2 then places this definition in historical perspective, showing how the concept has evolved in both English and French legal traditions. This progression from definition to historical context helps clarify why the remedy remains controversial and why its reception differs so markedly between common law and civil law systems.

Par. 1. The definition and operation of anti-suit injunctions in arbitration

18. A comprehensive yet concise definition of the remedy examined in this thesis is provided by Thomas Raphael KC, who states that “[a]n *anti-suit injunction* is an order of the court [or arbitral tribunal]¹⁶ requiring the injunction defendant not to commence, or to cease to pursue, or not to advance particular claims within, or to take steps to terminate or suspend, court or arbitration proceedings in a foreign country, or court proceedings elsewhere in the court’s own territorial jurisdiction. The order is addressed to, and binds, the actual or potential litigant in the other proceedings, and is not addressed to, and has no effect on, the other court”¹⁷. This remedy may be granted on an interim or final basis¹⁸.
19. As long ago as 1834¹⁹, English courts have exercised a jurisdiction to restrain a party from instituting or prosecuting proceedings in a foreign court²⁰. It was said that this jurisdiction is grounded “*not upon any pretension to the exercise of judicial [...] rights abroad*”, but upon the fact that the party to whom the order is directed is or has been made subject to the *in personam* jurisdiction of the English court²¹.
20. Although this remedy has long existed in English law, it lacked a convenient abbreviation until the late twentieth century, when the term “*anti-suit injunction*” — imported from the United States of America²² — became standard in modern English law²³.

¹⁶ For a comprehensive analysis, see: GAILLARD Emmanuel. *Anti-suit Injunctions Issued by Arbitrators*, pp. 235-266, in VAN DEN BERG Albert Jan (ed.). *International Arbitration 2006: Back to Basics?*, Volume 13 of the ICCA Congress Series, The Hague: Kluwer Law International, 2007.

¹⁷ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 2

¹⁸ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 667.

¹⁹ *Portarlington v Soulby* [1834] 3 My. & K. 104.

²⁰ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 667.

²¹ *Portarlington v Soulby* [1834] 3 My. & K. 104, 108, per Lord Brougham L.C.; *ibidem*.

²² *Bank of Tokyo v Karoon* [1987] AC 45 (Note) (CA) 59F.

²³ E.g. *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] 1 WLR 1889 (HL) [25], [58]; RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 2.

21. In *Turner v Grovit*, Lord Hobhouse criticised the terminology “*anti-suit*” injunction as misleading, as it may suggest that the order is addressed to the foreign court rather than the litigant, and proposed “*restraining order*” as an alternative²⁴. It seems it consisted on a vain attempt to dissuade the European Court from deciding that an anti-suit injunction was inconsistent with the Brussels Convention/Regulation scheme²⁵.
22. Indeed, *anti-suit* might suggest that the injunction affects the other court directly, when it only affects the party litigating²⁶; “*anti-pursuit of suit*”, though more accurate, is “*unacceptably clumsy*”, while “*restraining order*” is overly generic and fails to capture the specific nature of the remedy²⁷. Lord Hobhouse’s recharacterisation has found no supporters, and *anti-suit injunction* has become the standard terminology²⁸.
23. The English courts’ approach to granting anti-suit injunctions has fluctuated over time, marked by divergent opinions and development of principle, as illustrated in *Donohue v Armco*²⁹. However, the broader framework governing anti-suit injunctions is now largely settled, absent a fundamental reconsideration by the Supreme Court³⁰.
24. Injunctions are primarily granted in two situations: first, “*contractual*” cases, where foreign proceedings are in breach of a contractual forum clause; and second, “*alternative forum*” cases, where foreign proceedings overlap with matters that are being, or could be, litigated in England, especially where such proceedings are deemed vexatious or oppressive³¹. In addition to these core categories, there exist several less common grounds for granting injunctions, which include the protection of the English insolvency jurisdiction, “*single forum*” cases, anti-anti-suit injunctions, and, though

²⁴ *Turner v Grovit* [2002] 1 WLR 107 (HL) [23]: “[t]his terminology is misleading since it fosters the impression that the order is addressed to and intended to bind another court. It suggests that the jurisdiction of the foreign court is in question and that the injunction is an order that the foreign court desist from exercising the jurisdictions given to it by its own domestic law”.

²⁵ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 667, footnote 496.

²⁶ *Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871 [892].

²⁷ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 2.

²⁸ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 2-3.

²⁹ *Donohue v Armco* [2002] 1 Lloyd’s Rep 425 (HL) at [19]–[20].

³⁰ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 3.

³¹ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 3.

rare, injunctions restraining proceedings in England (outside the context of insolvency, where they are routine)³².

25. Injunctions may also be granted to restrain the pursuit of foreign arbitration proceedings as well as the pursuit of court proceedings, but this is exceptional due to the supervisory role of the court of the seat of arbitration and the growing recognition of the principle of competence-competence³³.
26. Following the decision of the European Court of Justice in *Turner v Grovit*³⁴, the Brussels-Lugano regime, along with other instruments of European jurisdictional law, imposed restrictions on the grant of anti-suit injunctions where they sought to restrain proceedings in other Brussels-Lugano member states, for as long as those instruments remained applicable in England.
27. The United Kingdom formally withdrew from the European Union on 31 January 2020, pursuant to the Withdrawal Agreement signed on 24 January 2020 and ratified by both parties³⁵. Under this Agreement, a transition period was established, during which European Union law — including the Regulation (EU) No 1215/2012 — continued to apply in the UK until 31 December 2020.
28. Since 1 January 2021, the UK is no longer bound by the Brussels Regulation (Recast) or the jurisprudence of the Court of Justice of the European Union. Moreover, the UK is not currently a party to the Convention on jurisdiction and the recognition and enforcement of judgement in civil and commercial matters signed in Lugano on 30 October 2007, as the EU has withheld consent to its accession despite support from

³² RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 3.

³³ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 3.

³⁴ *Turner v Grovit* [2002] 1 WLR 107 (HL).

³⁵ Withdrawal Agreement between the United Kingdom and the European Union, entered into force on 31 January 2020. See: UK Government, “Withdrawal Agreement Explainer for Part 2: Citizens’ Rights”, GOV.UK, 16 October 2020, available at: <https://www.gov.uk/government/publications/withdrawal-agreement-explainer-for-part-2-citizens-rights>.

other signatories such as Switzerland, Norway and Iceland³⁶. As a result, English courts have regained the ability to grant anti-suit injunctions against proceedings in EU member state courts, particularly where such proceedings breach an exclusive English jurisdiction clause or are deemed vexatious or oppressive. The implications of this shift are discussed further in Part II, with particular focus on the grant of anti-suit injunctions by English courts in support arbitration.

Par. 2. The historical development of anti-suit injunctions in English and French legal traditions

A. Evolution in English law

29. The historical development of anti-suit injunctions in English law is deeply rooted in the equitable jurisdiction of the Court of Chancery. Originally, the remedy evolved from the “common injunction,” which allowed the Chancery to restrain litigants from pursuing actions in common law courts when such proceedings conflicted with equitable principles. These injunctions were granted either to protect an equitable right or to prevent vexatious litigation and multiplicity of suits, without regard for comity, as no foreign courts were involved at that stage³⁷.
30. The first recorded instance of an anti-suit injunction addressing foreign proceedings dates back to the seventeenth century in *Love v Baker*, where Lord Clarendon LC expressed concern that restraining litigation in Leghorn (Livorno) might be “a dangerous case.” Although the injunction was dissolved, the reporter noted that “all the bar was of another opinion,” suggesting early judicial ambivalence³⁸.
31. By the late eighteenth century, the Chancery had begun to assert its jurisdiction more confidently. In *Grey v Duke of Hamilton* and *Lord Portland’s Case*, the court appeared

³⁶ European Commission, *Assessment on the application of the United Kingdom of Great Britain and Northern Ireland to accede to the 2007 Lugano Convention* COM(2021) 222 final, 4 May 2021, available at: <https://dorie.ec.europa.eu/en/details/-/card/6728526> (last accessed: 9 August 2025).

³⁷ *Barclays Bank v Homan*, [1993] BCLC 680, 685–86.

³⁸ *Love v Baker* [1665] 1 Chan Cas 67, 22 ER 698.

willing to bind the conscience of parties residing in England, even when the proceedings were abroad. This logic was reaffirmed in *Foster v Vassall* (1747), where the court assumed it could restrain foreign litigation on equitable grounds³⁹.

32. The nineteenth century saw the remedy become more established. In *Bushby v Munday* (1821), the court articulated the principle that an injunction could be granted if “the ends of justice” required it, marking a shift from reliance on substantive equity to a broader discretionary standard⁴⁰. This case is widely regarded as the starting point of modern anti-suit injunction jurisprudence⁴¹.
33. Throughout the 1800s, English courts granted injunctions to restrain proceedings in various jurisdictions, including Ireland, Jamaica, and the Netherlands. These cases often involved parallel litigation or interference with English insolvency or probate proceedings⁴².
34. However, judicial caution emerged in *Carron Iron*, where Lord Cranworth LC suggested that English courts should not interfere with foreign creditors suing in their own jurisdictions. Although this statement did not form part of the ratio and was later softened, it introduced a hesitancy that persisted into the twentieth century⁴³.
35. The fusion of law and equity under the Judicature Acts of 1873 and 1875 led to a reformulation of the principles governing anti-suit injunctions. The courts began to adopt the language of “vexation and oppression,” borrowed from stay-of-proceedings jurisprudence, as the primary test for granting injunctions⁴⁴. For nearly a century, this cautious approach dominated. Courts required strong justification to restrain foreign proceedings, and injunctions were rarely granted in the absence of a contractual right.

³⁹ *Foster v Vassall* [1747] 3 Atkyns 587, 26 ER 1138.

⁴⁰ *Bushby v Munday* [1821] 5 Madd 297, 56 ER 908, 913.

⁴¹ *Stichting Shell Pensionenfonds v Krys* [2015] AC 616 (PC) [17].

⁴² *Carron Iron Co v Maclaren* [1855] 10 ER 961, 5 HLC 416, 437–38.

⁴³ *Carron Iron v Maclaren* [1855] 10 ER 961, 5 HLC 416, 437–41.

⁴⁴ *McHenry v Lewis* [1881] 21 Ch D 202; *Hyman v Helm* (1883) 24 Ch D 531 (CA).

Even when foreign litigation was clearly inconvenient or burdensome, the threshold of “pure vexation” often proved insurmountable⁴⁵.

36. A turning point came in the 1980s with *Castanho v Brown & Root*, where Lord Scarman controversially suggested that an anti-suit injunction could be granted solely on the basis that England was the most appropriate forum. This view was later rejected in *Aérospatiale*, where Lord Goff reaffirmed that injunctions should only be granted if the foreign proceedings were vexatious or oppressive, or if the ends of justice required it⁴⁶.
37. Modern jurisprudence has since embraced a more flexible standard. Courts now recognise that “unconscionable conduct” may justify intervention, and that the enforcement of contractual obligations—particularly arbitration agreements—warrants a more assertive approach. The landmark decision in *The Angelic Grace* established that where foreign proceedings breach an arbitration clause, the English court will ordinarily grant an injunction unless strong reasons are shown to the contrary⁴⁷.
38. Thus, the evolution of anti-suit injunctions in English law reflects a gradual shift from equitable restraint to principled assertiveness, shaped by historical tensions between comity, contractual enforcement, and the ends of justice.

B. Evolution in French law

It is accurate to state that anti-suit injunctions do not exist as such under French law⁴⁸. They are a feature specific to common law systems and have often been portrayed negatively in French legal scholarship, and occasionally by French case law, notably due to their perceived interference with the functioning of foreign public justice systems⁴⁹.

⁴⁵ *Cohen v Rothfield* [1919] 1 KB 410 (CA) 414–15.

⁴⁶ *Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871 (PC) 896–97.

⁴⁷ *Aggeliki Charis Compania Maritima v Pagnan* (*The Angelic Grace*) [1995] 1 Lloyd's Rep 87 (CA).

⁴⁸ CARRIOU Vincent, et al. Les injonctions *anti-suit* anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue I, pp. 285-328, para. 18.

⁴⁹ BUREAU Dominique, et al. *Droit international privé*. Paris: Presses Universitaires de France, t. 1. 5th ed., para. 155-2.

39. Although anti-suit injunctions are traditionally regarded as a category foreign to French law⁵⁰, this does not necessarily imply that French law is inherently hostile to them⁵¹.
40. While the injunction is formally addressed to the parties — typically under the threat of significant sanctions — it nonetheless has a highly dissuasive effect. In practice, it prevents the foreign court from exercising its jurisdiction, in a manner that may appear contrary to the principle of comity (or international judicial courtesy), which is often associated with rules of public international law⁵².
41. In France, in *Banque Worms c Brachot*, the Cour de Cassation appears to have accepted the legitimacy of an order equivalent to an anti-suit injunction, enforceable by astreinte (a daily fine for non-compliance), to protect French insolvency proceedings⁵³. Subsequently, at the crest of the wave of European hostility, in *Stolzenberg*, the Cour de Cassation took the approach that anti-suit injunctions were inappropriate in principle⁵⁴.
42. It was in this context that, in a judgment dated 30 June 2004, the *Cour de cassation*, when granting recognition in France to a Mareva injunction (freezing order) issued by the High Court of London, made a point to distinguish it from anti-suit injunctions⁵⁵:

⁵⁰ BUREAU Dominique, et al. *Droit international privé*. Paris: Presses Universitaires de France, t. 1. 5th ed., para. 155-2; SERAGLINI, Christophe, et al. *Droit de l'arbitrage interne et international*. Paris: LGDJ, 2019, para. 676.

⁵¹ CARRIOU Vincent, et al. Les injonctions *anti-suit* anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue I, pp. 285-328, para. 17.

⁵² CARRIOU Vincent, et al. Les injonctions *anti-suit* anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue I, pp. 285-328, para. 18.

⁵³ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 6.

⁵⁴ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 6.

⁵⁵ Freely translated by the author. Cass. civ. 1re, 30 juin 2004, *Stolzenberg*, *JCP G.*, 2004, II, 10198, concl. Sainte-Rose: “[...] cette interdiction faite à la personne du débiteur de disposer en tout lieu de ses biens, dans la mesure où il s'agit de préserver les droits légitimes du créancier, ne saurait porter atteinte à un droit fondamental du débiteur, ni même indirectement, à une prérogative de souveraineté étrangère et, notamment, n'affecte pas, à la différence des injonctions dites "antisuit", la compétence juridictionnelle de l'Etat requis ; que n'étant donc pas contraire à l'ordre public international, elle peut être reçue dans l'ordre juridique français, ainsi que l'a exactement décidé l'arrêt attaqué, dès lors que sont réunies les autres conditions de la reconnaissance et de l'exécution”.

“[...] *this prohibition imposed on the debtor from disposing of their assets anywhere, insofar as it serves to protect the creditor's legitimate rights, cannot infringe upon a fundamental right of the debtor, nor even indirectly upon a foreign sovereign prerogative, and, in particular, unlike so-called 'anti-suit' injunctions, does not affect the jurisdictional competence of the requested State; as it is therefore not contrary to international public policy, it may be recognised within the French legal order, as correctly held by the judgment under appeal, provided that the other conditions for recognition and enforcement are met*” (emphasis added).

43. This distinction was articulated in an *obiter dictum* particularly critical of anti-suit injunctions, on the basis that such measures interfere with the jurisdictional authority of the court in the requested State⁵⁶.
44. More recently, in a judgment dated 3 March 2020, the Paris Court of Appeal reaffirmed its reservations about certain anti-suit injunctions⁵⁷. The case concerned a broadly framed American anti-suit injunction prohibiting a patent-holding company from initiating infringement proceedings against one of its commercial partners, pending a decision by the US courts on the conditions for granting the license in dispute.
45. Affirming its territorial jurisdiction on the basis of Article 46, paragraph 2 of the French Code of Civil Procedure, on the grounds that the injunction in question caused harm in France to the patent holder—who was deprived of the right to bring proceedings before the French court to assert their rights over the French part of the European patent they hold—the French interim relief judge ordered the party responsible for the anti-suit injunction to withdraw its request. In doing so, the judge effectively issued an

⁵⁶ CARRIOU Vincent, et al. Les injonctions *anti-suit* anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue I, pp. 285-328, para. 19.

⁵⁷ Paris, 3 mars 2020, *Lenovo et al. c/ IPCOM*, n° 19/21426. *Lenovo (United States) Inc et al. c. IPCOM GmbH & Co. KG*, Paris, Cour d'appel, Pôle 5, chambre 16, 3 mars 2020, n° 19/21426.

injunction with an effect equivalent to that of an anti-anti-suit injunction⁵⁸. On appeal, this decision was upheld on the grounds that “*such an impediment constitutes a manifestly unlawful disturbance, insofar as it infringes the right of an industrial patent holder to assert their rights before the only court competent to rule on the infringement of their proprietary title*”⁵⁹.

46. It should not be inferred, however, that French courts are categorically hostile to anti-suit injunctions⁶⁰. In particular, the criticisms traditionally levelled against such measures have gradually lost traction in cases where the injunction is justified by more legitimate grounds — namely, when it is issued not to protect the jurisdiction of the forum court as the most appropriate venue against any competing foreign jurisdiction, but rather in support of a jurisdiction clause, whether state-based or arbitral⁶¹. A more tentative acceptance is also observed when the injunction seeks to prevent or sanction a clear abuse of process by one of the parties⁶².
47. French law now appears to exhibit what has been described as a “cautious interest” in anti-suit injunctions, reflecting a gradual process of legitimisation — at least in cases where the injunction protects a jurisdiction that has been contractually agreed⁶³. This shift is evident both in the recognition of foreign anti-suit injunctions and, albeit modestly, in the emergence of domestic measures with comparable effects⁶⁴.
48. In its more recent decision, *In Zone Brands*, the Cour de Cassation concluded that a US anti-suit injunction to enforce an exclusive jurisdiction clause was not contrary to

⁵⁸ CARRIOU Vincent, et al. Les injonctions *anti-suit* anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue I, pp. 285-328, para. 19.

⁵⁹ *Lenovo (United States) Inc et al. c. IPCom GmbH & Co. KG*, Paris, Cour d'appel, Pôle 5, chambre 16, 3 mars 2020, n° 19/21426.

⁶⁰ CARRIOU Vincent, et al. Les injonctions *anti-suit* anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue I, pp. 285-328, para. 20.

⁶¹ NIBOYET Marie-Laure, et al. *Droit international privé*. Paris: LGDJ, coll. « Manuels », 8th ed., 2023, par. 623.

⁶² CARRIOU Vincent, et al. Les injonctions *anti-suit* anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue I, pp. 285-328, para. 20.

⁶³ CARRIOU Vincent, et al. Les injonctions *anti-suit* anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue I, pp. 285-328, para. 20.

⁶⁴ CARRIOU Vincent, et al. Les injonctions *anti-suit* anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue I, pp. 285-328, para. 20.

international public policy, nor the right of access to the court, and should be recognized and enforced by the French courts. Arguments that the injunction was an interference with French sovereignty and a breach of Article 6 of the European Convention on Human Rights were not accepted⁶⁵.

49. Subsequently, in *Vivendi v Gerard*, the Paris Court of Appeal rejected an appeal against the refusal by the Tribunal de Grande Instance to grant an anti-suit injunction restraining proceedings in the USA. But although it had been argued that French courts did not have power to grant such injunctions, the Court of Appeal of Paris (like the TGI) did not adopt that reasoning, rejecting the injunction on the grounds that the USA was a natural forum for the substantive litigation, there was no illegitimate 'forum shopping', and that the necessary 'fraude' (which can perhaps be best translated as wrongfulness, or even vexation) was not made out on the facts. The Court of Appeal abstained from commenting on the question of power⁶⁶.
50. It would be going too far to suggest that the anti-suit injunction has conquered civil lawyers' affections. It seems unlikely that the remedy will be adopted by civil law systems in any general fashion. Nevertheless, civil law hostility to the injunction is no longer monolithic nor universal, and while disapproval persists, it is now tempered with greater understanding⁶⁷.

Section 2. Compatibility of anti-suit injunctions with international arbitration principles

51. The issuance of anti-suit injunctions in support of arbitration raises complex questions about their compatibility with foundational principles of international arbitration. While these injunctions are designed to protect the integrity of the arbitral process, they also risk encroaching upon the jurisdictional authority of foreign courts and the autonomy of arbitral tribunals. This section explores two key dimensions of this

⁶⁵ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 6.

⁶⁶ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 6.

⁶⁷ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 8.

tension. First, it examines how anti-suit injunctions interact with the principle of competence-competence and the autonomy of arbitrators to determine their own jurisdiction (par. 1). Second, it considers the broader implications for international comity and the sovereignty of foreign courts, highlighting the delicate balance between judicial support for arbitration and respect for transnational legal pluralism (par. 2).

Par. 1. Interaction with the principle of competence-competence and arbitral autonomy

52. The principle of competence-competence, which affirms the arbitrator's authority to determine their own jurisdiction, is a cornerstone of international arbitration. It is widely recognised across jurisdictions, yet its application remains subject to significant divergence in interpretation and scope⁶⁸. This principle is closely linked to the autonomy of the arbitration agreement, which ensures that challenges to the validity of the main contract do not automatically undermine the arbitration clause⁶⁹.
53. As Pierre Mayer explains, the arbitrator's autonomy is not absolute; it is constrained by the possibility of judicial review, which may ultimately deprive the award of effectiveness if the arbitrator's jurisdiction is not upheld by state courts⁷⁰. Nonetheless, arbitrators retain the practical power to proceed with the arbitration, even in the face of judicial opposition, and may choose to do so when the claimant lacks access to an impartial forum elsewhere⁷¹.
54. The issuance of anti-suit injunctions by national courts, however, poses a direct challenge to the competence-competence principle. When a court grants such an

⁶⁸ *Fouchard, Gaillard, Goldman on International Commercial Arbitration* / ed. Emmanuel GAILLARD and John SAVAGE. The Hague: Kluwer Law International, 1999, p. 395.

⁶⁹ *Fouchard, Gaillard, Goldman on International Commercial Arbitration* / ed. Emmanuel GAILLARD and John SAVAGE. The Hague: Kluwer Law International, 1999, pp. 213-214.

⁷⁰ MAYER Pierre. *L'autonomie de l'arbitre international dans l'appréciation de sa propre compétence*, in *Recueil des cours de l'Académie de droit international de La Haye*, vol. 217, The Hague, Boston and London: Martinus Nijhoff Publishers, 1989, p. 452.

⁷¹ MAYER Pierre. *L'autonomie de l'arbitre international dans l'appréciation de sa propre compétence*, in *Recueil des cours de l'Académie de droit international de La Haye*, vol. 217, The Hague, Boston and London: Martinus Nijhoff Publishers, 1989, p. 452.

injunction based on its own assessment of the arbitration agreement's validity, it effectively usurps the arbitrator's prerogative to rule on jurisdiction⁷². This tension is particularly acute in civil law jurisdictions, where judicial restraint is often favoured to preserve the integrity of arbitral proceedings. As Gaillard argues, national courts should refrain from intervening prematurely and instead allow arbitrators to exercise their jurisdictional mandate, with state courts retaining the power to review the award only at the enforcement stage⁷³.

55. Moreover, arbitral tribunals themselves may issue anti-suit injunctions to protect their jurisdiction, especially when faced with parallel court proceedings that threaten to derail the arbitration⁷⁴. While such measures remain controversial, they reflect a growing recognition of the tribunal's authority to safeguard the arbitral process. In this context, the competence-competence principle serves not only as a doctrinal foundation but also as a practical shield against judicial encroachment. The balance between judicial support and arbitral autonomy thus hinges on a nuanced understanding of the respective roles of courts and tribunals in upholding the parties' agreement to arbitrate.

Par. 2. Respect of international comity and the sovereignty of foreign courts

56. The principle of comity and the notion of sovereignty are central to the debate surrounding anti-suit injunctions. While these injunctions are formally addressed to the parties and not to foreign courts, their practical effect often amounts to an indirect interference with the judicial authority of another state. This raises two distinct but interrelated concerns. First, how comity operates as a guiding value in international dispute resolution, particularly in common law systems that seek to balance judicial cooperation with the enforcement of private agreements (A). Second, how civil law jurisdictions, especially those with a strong emphasis on public judicial authority,

⁷² GAILLARD Emmanuel. Il est interdit d'interdire : réflexions sur l'utilisation des anti-suit injunctions dans l'arbitrage international. *Revue de l'arbitrage*, vol. 2004, issue 1, par. 21.

⁷³ GAILLARD Emmanuel. Il est interdit d'interdire : réflexions sur l'utilisation des anti-suit injunctions dans l'arbitrage international. *Revue de l'arbitrage*, vol. 2004, issue 1, par. 23.

⁷⁴ GAILLARD Emmanuel. *Anti-suit Injunctions Issued by Arbitrators*, pp. 235-266, in VAN DEN BERG Albert Jan (ed.). *International Arbitration 2006: Back to Basics?*, Volume 13 of the ICCA Congress Series, The Hague: Kluwer Law International, 2007, pp. 236-237.

perceive anti-suit injunctions as infringing upon their sovereign prerogatives (B). These two perspectives are explored in the following subsections.

A. The principle of comity in international dispute resolution

57. Comity has several meanings⁷⁵. In ordinary language, the term “*comity*” denotes mutual courtesy or civility⁷⁶. In *British Airways Board v Laker Airways*, Sir John Donaldson MR characterised judicial comity as “*a shorthand for good neighbourliness, common courtesy, and mutual respect between those who labour in adjoining judicial vineyards*”⁷⁷. In the same case, comity was further defined as “*a principle d’ordre public, and not a question of private rights and duties; it reflects mutual respect between different states, legal systems, and courts*”⁷⁸.
58. Within common law approaches to public and private international law, the expression “*comity of nations*” encompasses different concepts united by a shared underlying notion: that different nations — and, in particular, their courts and legal systems — owe one another mutual and reciprocal respect, sympathy, and deference, where appropriate⁷⁹.
59. This underlying notion manifests differently in different contexts. Comity may refer to the mutual obligation that states owe one another under public international law. However, its scope extends beyond the principles of public international law, and encompasses more general imperatives of international public policy which do not amount to rules of law⁸⁰.

⁷⁵ Dicey, *Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 670.

⁷⁶ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 8.

⁷⁷ *British Airways Board v Laker Airways* [1984] QB 142 (CA) 186H.

⁷⁸ *British Airways Board v Laker Airways* [1984] QB 142 (CA) 186H.

⁷⁹ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 8.

⁸⁰ AKEHURST Michael. *Jurisdiction in International Law*, in *British Yearbook of International Law*, London: Oxford University Press, 1972–73, par. 214-216.

60. Reasoning based on comity is invoked to justify specific rules of both international and domestic law⁸¹. It serves, for instance, to justify the principles of sovereign immunity and non-justiciability, and underlies the cooperation extended by English courts in response to requests for international judicial assistance in the gathering of evidence⁸².
61. Comity calls for caution⁸³. Although the injunction applies only to the individual party involved in the foreign proceedings, it still amounts to an indirect interference with the foreign court's process⁸⁴. In *Laker Airways*, the United States court characterised the English injunction as a "*direct interference*"⁸⁵. As a result, the court must approach its jurisdiction with care, especially when the foreign claimant has initiated proceedings in its own national court⁸⁶.
62. The principle of comity requires the court to acknowledge that judges from distinct legal systems, guided by differing legal policies, may reasonably reach divergent conclusions⁸⁷. Such outcomes do not necessarily breach customary international law or result in manifest injustice⁸⁸. In these circumstances, the English court must refrain from assuming authority over how a foreign court should resolve the matter⁸⁹.
63. A close connection between the foreign court and the parties or the subject matter strengthens the case against judicial intervention⁹⁰. Accordingly, comity may be decisive when the English court considers granting an anti-suit injunction in a case

⁸¹ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 9.

⁸² RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 9.

⁸³ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 669.

⁸⁴ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 669.

⁸⁵ *Laker Airways v British Airways Board* [1984] QB 142 (CA) (discharged [1985] AC 58).

⁸⁶ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 669.

⁸⁷ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 670.

⁸⁸ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 670.

⁸⁹ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 670.

⁹⁰ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 670.

lacking any relevant connection to England, as such an order could contravene international law⁹¹.

64. The situation changes when the court considers an injunction to restrain proceedings that violate an arbitration or jurisdiction agreement. In such cases, no heightened caution is necessary beyond the usual care exercised before issuing an injunction, which may be granted without notice⁹². Strong reasons must exist to override the claimant's *prima facie* entitlement to relief where the parties have agreed to submit disputes to the exclusive jurisdiction of the English court or to arbitration⁹³.
65. In the context of anti-suit injunctions, the notion of comity is deployed in five main concepts in English jurisprudence: (i) the principle that jurisdiction should not be exercised in an excessive or unreasonable manner⁹⁴; (ii) the view that state courts should not, without strong justification, issue remedies that interfere, even indirectly, with the territorial and adjudicatory sovereignty of foreign legal systems⁹⁵; (iii) the acceptance that foreign courts and states are entitled to a degree of deference beyond the rules of *res judicata* and the recognition of foreign judgments⁹⁶; (iv) the idea that each state's legal system has its own natural sphere of influence, within which the presumption against interference by another state's courts is of particular force, but outside which a state is entitled to a lesser degree of defence⁹⁷; and (v) the converse

⁹¹ Dicey, Morris and Collins on the Conflict of Laws / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 670.

⁹² Dicey, Morris and Collins on the Conflict of Laws / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 670.

⁹³ Dicey, Morris and Collins on the Conflict of Laws / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 670.

⁹⁴ *JSC Bank of Moscow v Kechman* [2015] 1 WLR 3737, [59].

⁹⁵ *Barclays Bank v Homan* [1993] BCLC 680, 690; *Credit Suisse Fides Trust v Cuoght* [1998] QB 818 (CA) 827; *Airbus Industrie v Patel* [1999] 1 AC 119 (HL) 133H, 138G, 140A-B, F (requiring that the English court have a "sufficient reason").

⁹⁶ *Barclays Bank v Homan* [1993] BCLC 680, 690, 692; *Yukos Capital v Rosneft Oil* [2014] QB 458 (CA) [87], [125]: "comity... cautions that the judicial acts of a foreign state acting within its territory should not be challenged without cogent evidence"; *Stichting Shell Pensionenfonds v Kryz* [2015] AC616 (PC) [42].

⁹⁷ Thus, comity imposes fewer restraints on English courts where the foreign court seeks to exercise exorbitant jurisdiction over matters which do not fall within its own natural sphere of influence: *British Nylon Spinners v Imperial Chemical Industries* [1953] Ch 19 (CA) 27, 28; *Yukos Capital v Rosneft Oil* [2014] QB 458 (CA) [128]; or in a way contrary to international law: see, by analogy, *Kuwait Airways v Iraqi Airways* [2002] 2 AC 883 (hl) [24]-[29]. See *Societe Nationale Industrielle Aerospatiale v Lee*

concept that a court has stronger grounds to intervene when a matter falls within its own natural sphere of influence⁹⁸.

66. In this context, comity refers to a set of principles or values, rather than a rigid rule, and must be balanced against other principles or values⁹⁹. The principle of comity has influenced the development of the rules governing the issuance or denial of anti-suit injunctions; moreover, it continues to serve as a independent consideration in the court's discretionary decision-making process¹⁰⁰.
67. A more nuanced form of critique, grounded in the notion of comity, has been expressed by scholars from both civil law and common law traditions¹⁰¹. In numerous instances, the arguments presented to the originating court in favour of granting an injunction—or their equivalents—may also be raised before the receiving court in the context of an application to stay its proceedings¹⁰². Where an argument carries weight solely before the originating court, this is typically due to divergences in national law and policy between the jurisdictions involved. This leads to two key questions: if similar arguments or their equivalents can be raised in the foreign court, what justifies—or entitles—the originating court to intervene¹⁰³? Conversely, if such arguments cannot be advanced abroad, what confers the originating court the authority to intervene, given that the necessity is evident¹⁰⁴?
68. One may contend that, if these questions are given due consideration, it becomes evident that anti-suit injunctions ought not to be granted on grounds of comity—except possibly in narrowly defined situations—since the indirect intrusion upon the foreign

Kui Jak [1987] AC 871 (PC) 894D-E and *Stitching Shell Pensionenfonds v Krys* [2015] AC 616 (PC) [42].

⁹⁸ *Airbus Industrie v Patel* [1999] 1 AC 119 (HL) 140D; *Deutsch Bank v Highland Crusader Offshore Partners* [2010] 1 WLR 1023 (CA) [50].

⁹⁹ *Deutsch Bank v Highland Crusader Offshore Partners* [2010] 1 WLR 1023 (CA) [50].

¹⁰⁰ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 9-10.

¹⁰¹ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 17.

¹⁰² RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 17.

¹⁰³ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 17.

¹⁰⁴ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 17.

court cannot be justified by any clearly identifiable necessity or entitlement¹⁰⁵. This line of reasoning is appealing in its flexibility, as it allows for the possibility that the originating court may, in certain cases, possess both the need and the authority to intervene¹⁰⁶.

69. The English courts, along with the Privy Council, have acknowledged these concerns. In *Aérospatiale*¹⁰⁷, Lord Goff marked a significant shift in the case law by asserting that granting an injunction solely due to a disagreement between the domestic and foreign courts over the appropriate forum would be incompatible with comity; a further justification was necessary to warrant such intervention¹⁰⁸. Moreover, in *Airbus v Patel*¹⁰⁹, Lord Goff emphasised that, from the standpoint of comity, the English court must demonstrate a 'sufficient interest' in the dispute to legitimately intervene¹¹⁰. Nonetheless, the English courts have frequently responded — and continue to respond — affirmatively to the question of whether they possess both the necessity and the authority to intervene¹¹¹.
70. Thus, in contractual cases, the English courts have derived their authority to intervene from the parties' contractual choice of England as the forum¹¹². The established interpretation given by English courts to any standard English exclusive jurisdiction clause is that a clear and valid contractual clause conferring exclusive jurisdiction over any dispute arising out of the contract to the courts of X also extends to disputes concerning the forum itself¹¹³. Moreover, such a clause may expressly authorise the courts of X to award damages and grant injunctive relief in respect of any breach, including proceedings initiated in a forum other than X¹¹⁴. If such a clause has been

¹⁰⁵ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 17-18.

¹⁰⁶ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 18.

¹⁰⁷ *Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] UKPC 12; [1987] AC 871.

¹⁰⁸ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 18.

¹⁰⁹ *Airbus Industrie GIE v Patel and Others* [1999] 1 AC 119; [1998] UKHL 12.

¹¹⁰ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 18.

¹¹¹ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 18.

¹¹² *Aggeliki Charis Compania Maritima v Pagnan (The Angelic Grace)* [1995] 1 Lloyd's Rep 87 (CA) 96; *OT Africa Lines v Magic Sportswear* [2005] 2 Lloyd's Rep 170 (CA) [27], [32], [58]-[61], [73].

¹¹³ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 18.

¹¹⁴ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 18.

agreed, then to prohibit the grant of the injunction it envisages would amount to interference with freely assumed contractual obligations¹¹⁵.

71. According to Thomas Raphael KC, this reasoning also addresses the objection advanced by certain scholars from civil law jurisdictions, who contend that arbitration clauses and exclusive forum clauses merely create procedural rights, enforceable only within a given legal system through mechanisms such as a stay of proceedings before the designated court¹¹⁶. Raphael challenges this view, asserting that “*this, with respect, is a parochial perspective*”, noting that such clauses are regarded as substantive contractual obligations in a number of legal systems, in particular systems with a common law heritage¹¹⁷.
72. Where parties have consented to an arbitration or exclusive jurisdiction clause governed by a particular legal system, they have accepted both the legal reasoning underpinning that system and the remedies it provides¹¹⁸. An alternative interpretation under a civil law system does not justify disregarding the parties’ chosen legal framework¹¹⁹.
73. The necessity of granting the injunction arises from the fact that, absent such relief, the claimant would be compelled to defend the claim or contest jurisdiction before the foreign court—precisely the scenario the parties sought to avoid by contract. This would not only result in unwarranted costs and burdens stemming from proceedings conducted in breach of the agreement, but also expose the defendant to the risk of unintentionally submitting to the foreign court’s jurisdiction¹²⁰.
74. However, these considerations do not fully address the core issue. The most contentious scenarios typically involve foreign jurisdictions applying distinct conflict of laws

¹¹⁵ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 18.

¹¹⁶ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 18.

¹¹⁷ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 18.

¹¹⁸ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 18-19.

¹¹⁹ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 19.

¹²⁰ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 19.

principles or mandatory public policy rules that nullify an exclusive forum clause which, under English law, would be deemed valid¹²¹.

75. In such circumstances, the critical question becomes: on what basis can the English court assert its interpretation of the clause's validity, thereby overriding the defendant's right to rely on the potentially opposing stance of the foreign court? The principal justification offered by the English courts is that they are bound to apply their own conflict of laws rules and to give effect to the contractual obligations those rules recognise¹²². Yet, from an international perspective, this rationale may be insufficient.
76. It can be argued that, for an injunction in such a case to be compatible with comity and to avoid a parochial approach, there must be a broader, system-transcendent justification for prioritising English conflict of laws rules and for permitting English court to intervene¹²³. A potential system-transcendent justification lies in the principle of freedom of contract: where parties have deliberately chosen to contract under a particular system of law — including that system's conflicts of laws rules — and to submit to the exclusive jurisdiction of its courts, their personal choices should be respected and their personal obligations enforced¹²⁴. It is therefore legitimate for the designated court to enforce those obligations¹²⁵.
77. Opponents of anti-suit injunctions may argue that this recognition of comity remains insufficient, as no legal system can claim to operate free from its own inherent biases¹²⁶. They may further assert that, regardless of any proposed system-transcendent rationale, such reasoning cannot justify denying the defendant the opportunity to rely on the foreign court's legal and policy framework¹²⁷.

¹²¹ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 19.

¹²² RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 19.

¹²³ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 19.

¹²⁴ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 19.

¹²⁵ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 19.

¹²⁶ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 19-20.

¹²⁷ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 19-20.

78. This stage of the analysis presents a fundamental conflict of values. Should the respect that comity affords to the sovereignty of foreign legal systems — and their entitlement to apply their own laws and policies — compel non-intervention, regardless of any system-transcendent rationale? Or does the importance to achieve practical justice and enforce contractual obligations, as understood by the originating system (and to the extent that a system-transcendent foundation can be established), provide sufficient grounds to issue an injunction, even if this leads to tensions with comity?¹²⁸
79. Common law adopts the latter approach. This reflects a decision rooted in fundamental values, shaped as much by political considerations as by legal reasoning¹²⁹.
80. In support of the common law position, it is worth noting that a strict policy of non-intervention does not offer a neutral outcome. While an anti-suit injunction enforces the domestic court's understanding of justice, refusing to intervene may allow a party to circumvent freely undertaken obligations by seeking out a jurisdiction willing to disregard them¹³⁰. A practical illustration can be found in *The Front Comor*¹³¹, where the central issue was not whether the English court placed trust in the Italian court. Rather, the question concerned which legal framework — Italian or English — should govern the assessment of whether an arbitration clause under English law, designating England as the seat, was binding¹³².
81. In cases involving injunctions that enforce exclusive jurisdiction or arbitration clauses, “comity has little if any role to play”¹³³. It has been said that issuing an injunction to enforce an exclusive jurisdiction clause governed by English law does not amount to a violation of comity, as it simply compels a party to honour its contract¹³⁴.

¹²⁸ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 20.

¹²⁹ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 20.

¹³⁰ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 20.

¹³¹ *Allianz SpA v West Tankers Inc* (The Front Comor), Case C-185/07 [2009] ECR I-00663; ECLI:EU:C:2009:69.

¹³² RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 20.

¹³³ *Enka Insaat ve Sanayi AS v OOO "Insurance Company Chubb"* [2020] UKSC 38, [2020] 1 W.L.R. 4117, at [184].

¹³⁴ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 685.

B. Sovereignty concerns raised by anti-suit injunctions

82. The legitimacy of anti-suit injunctions has been fundamentally challenged by scholars and judges from civil law jurisdictions, who argue that such measures infringe upon the sovereignty of foreign courts. This objection is grounded in two principal claims: first, that the court seised of the proceedings must have the exclusive authority to determine its own jurisdiction under its national law; and second, that any attempt by a foreign court to assess the propriety of those proceedings constitutes an illegitimate intrusion into the adjudicatory domain of the receiving court.
83. From the perspective of these arguments, the common law assertion that anti-suit injunctions operate *in personam* and do not interfere directly with the foreign court is dismissed as formalistic. The indirect effect — namely, the prevention of proceedings in the foreign court — is viewed as equally objectionable¹³⁵.
84. This divergence reflects deeper philosophical differences between legal traditions. Civil law systems prioritise public judicial authority and the sovereign prerogative of courts to regulate access to justice¹³⁶. In contrast, common law systems emphasise private justice and the enforcement of contractual obligations¹³⁷. As Raphael explains, “*the dominant consideration [in civil law] is not where a dispute should justly be resolved, but the doctrinal principle that the receiving court’s authority to determine what litigation may be brought before it should be unquestioned by foreign courts*”¹³⁸.
85. This tension is vividly illustrated in *Owusu v Jackson*, where the ECJ rejected the notion that a court could decline jurisdiction on the basis of *forum non conveniens*, reinforcing the primacy of jurisdictional sovereignty¹³⁹.

¹³⁵ *Turner v Grovit* [2004] ECR I-3565, AG [32], [34]; RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 14.

¹³⁶ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 15.

¹³⁷ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 15.

¹³⁸ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 15.

¹³⁹ *Owusu v Jackson* [2005] ECR I-1383.

86. In contrast, the common law approach views the court as a neutral arbiter tasked with resolving disputes justly between parties¹⁴⁰. The court's role is not to assert sovereign authority, but to uphold the parties' contractual rights¹⁴¹. To dismiss the personal logic of anti-suit injunctions as an irrelevant formalism is particularly inaccurate in cases where the injunction defendant owes a concrete personal jurisdictional obligation not to litigate abroad¹⁴². As Raphael notes, "*a contractual anti-suit injunction does, in a very real sense, enforce personal obligations of the injunction defendant*"¹⁴³.
87. This recognition has led to a gradual shift in civil law jurisdictions. Scholars such as S. Clavel acknowledge that where an anti-suit injunction enforces a contractual obligation, "*l'irregularité est moins flagrante*", and may therefore be permissible¹⁴⁴.
88. French courts have increasingly accepted the legitimacy of foreign anti-suit injunctions grounded in contractual obligations. In *In Zone Brands*, the *Cour de Cassation* recognised a US injunction enforcing an exclusive jurisdiction clause, holding that it was not contrary to international public policy¹⁴⁵.
89. Moreover, common law courts do not universally reject foreign anti-suit injunctions. In *OT Africa Line v Magic Sportswear*, the Canadian Federal Court of Appeal acknowledged the legitimacy of an English anti-suit injunction¹⁴⁶, and the French courts have similarly recognised foreign injunctions in appropriate circumstances¹⁴⁷.

¹⁴⁰ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 15.

¹⁴¹ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 15.

¹⁴² *Apple Corps v Apple Computer* [1992] RPC 70; 79.

¹⁴³ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 15.

¹⁴⁴ CLAVEL Sandrine. Anti-Suit Injunction et arbitrage. *Revue de l'arbitrage*, vol. 2001, issue 4, par. 669, 674–75, 678–79.

¹⁴⁵ *In Beverage International SA et M. Lionel X c. In Zone Brands Inc.*, Cass. civ. 1re, 14 octobre 2009, n° 08-16.369 et 08-16.549, publié au bulletin; RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 16.

¹⁴⁶ *OT Africa Line v Magic Sportswear* [2007] 1 Lloyd's Rep 75 (Canada Federal Court of Appeal) 55], [75], [81]–[82].

¹⁴⁷ *In Beverage International SA et M. Lionel X c. In Zone Brands Inc.*, Cass. civ. 1re, 14 octobre 2009, n° 08-16.369 et 08-16.549, publié au bulletin.

90. Thus, while civil law objections remain potent, they are increasingly tempered by a recognition of the contractual foundations of anti-suit injunctions. As Raphael concludes, “*an absolute principle that comity must always preclude the grant of anti-suit injunctions to restrain the pursuit of proceedings before the courts of a foreign state has little attraction other than its simplicity*”¹⁴⁸.

CHAPTER 2. THE APPROACH OF ENGLISH AND FRENCH COURTS TO ANTI-SUIT INJUNCTIONS IN SUPPORT OF ARBITRATION

91. Having examined the conceptual foundations and historical evolution of anti-suit injunctions, as well as their compatibility with key principles of international arbitration, the analysis now turns to how these injunctions are applied in practice.
92. Chapter 2 explores the approach of English and French to anti-suit injunctions in support of arbitration. Section 1 focuses on the English legal framework, where courts have developed a robust doctrine to enforce arbitration agreements. Section 2 contrasts this with the more restrained stance of French courts, which have shown a growing openness to recognising anti-suit injunctions under specific conditions. Together, these sections provide a comparative insight into how national courts navigate the tension between judicial support for arbitration and respect for transnational judicial sovereignty.

Section 1. The English legal framework for granting anti-suit injunctions

93. To understand how English courts approach anti-suit injunctions in support of arbitration, it is essential to examine both the legal foundations of the remedy and the principles guiding its discretionary application. The English framework is shaped by statutory provisions, notably section 37 of the Senior Courts Act 1981, and a rich body of case law that has progressively refined the conditions under which such injunctions may be granted. Paragraph 1 sets out the legal prerequisites for issuing anti-suit

¹⁴⁸ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 16.

injunctions, particularly in arbitration-related disputes. Paragraph 2 then explores how English courts balance party autonomy with procedural fairness, highlighting the role of judicial discretion and the evolving standards that govern the issuance of this powerful remedy.

Par. 1. Conditions and standards for granting anti-suit injunctions under English law

94. The conditions under which English courts grant anti-suit injunctions in support of arbitration are shaped by both statutory authority and judicial precedent. These conditions are not applied mechanically but are filtered through a discretionary framework that reflects the courts' commitment to equitable principles and procedural fairness. To better understand how this framework operates, the following subsections examine two key aspects: first, the legal prerequisites that must be satisfied before an injunction can be issued (A); and second, the principles that guide the court's discretion in determining whether relief should be granted in a given case (B).

A. Legal prerequisites for issuing injunctions

95. Under English law, the power to issue anti-suit injunctions is rooted in section 37(1) of the Senior Courts Act 1981, which provides that the court may “*by order (interim or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so*”¹⁴⁹. This broad statutory language is tempered by a well-developed body of case law that imposes structured principles on the exercise of judicial discretion¹⁵⁰.
96. In the context of arbitration, the relevant jurisdictional gateway is typically established under the Civil Procedure Rules. Where the defendant is not domiciled in England, the court must be satisfied that it has international jurisdiction. This may be shown either

¹⁴⁹ United Kingdom, *Senior Courts Act 1981*, c. 54, s. 37(1). Available at: <https://www.legislation.gov.uk/ukpga/1981/54/section/37>.

¹⁵⁰ RAPHAEL, Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 84-85.

by the seat of arbitration being located in England (Article 62.5(1)(c) of the Civil Procedure Rules), or by the arbitration agreement being governed by English law (CPR 6.36 and Practice Direction 6B para. 3.1.6(c))¹⁵¹.

97. The English courts have long recognised that an agreement to arbitrate entails a negative obligation not to litigate elsewhere. This obligation is enforceable even if no arbitration has yet commenced, and even if neither party intends to initiate arbitration proceedings¹⁵². The Supreme Court has confirmed that this negative obligation is as fundamental as any positive contractual duty and may be enforced by way of injunction under section 37 of the 1981 Act, independently of the Arbitration Act 1996¹⁵³.
98. Although section 44 of the Arbitration Act 1996 empowers courts to grant interim measures in support of arbitration, it does not displace the broader power under section 37 of the Senior Courts Act. The 1996 Act applies only when arbitration is on foot or contemplated, whereas section 37 allows the court to act even in the absence of arbitral proceedings¹⁵⁴.
99. Once this threshold is met, the court will consider whether the injunction is necessary to prevent injustice. In contractual cases, the guiding principles are those established in *The Angelic Grace*, where Millett LJ stated that there is “*no good reason for diffidence*” in granting an injunction to restrain foreign proceedings brought in breach of an arbitration agreement¹⁵⁵.
100. In arbitration-related cases, the leading authority is *The Angelic Grace*¹⁵⁶, where Millett LJ held that the court should not hesitate to grant an injunction to restrain foreign

¹⁵¹ *Ust-Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk Hydropower Plant LLP* [2013] UKSC 35, paras. 49–51.

¹⁵² *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, pp. 681–682.

¹⁵³ *AES Ust-Kamenogorsk*, *supra*.

¹⁵⁴ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, pp. 682–683.

¹⁵⁵ *Aggeliki Charis Compania Maritima v Pagnan (The Angelic Grace)* [1995] 1 Lloyd's Rep 87.

¹⁵⁶ *Aggeliki Charis Compania Maritima v Pagnan (The Angelic Grace)* [1995] 1 Lloyd's Rep 87.

proceedings brought in breach of an arbitration agreement. The justification is simple: the defendant has promised not to litigate elsewhere, and without an injunction, the claimant would be deprived of its contractual rights in a situation where damages are manifestly inadequate¹⁵⁷.

101. In *The Angelic Grace*, the Court held that where foreign proceedings are brought in breach of an arbitration or exclusive jurisdiction clause, the English court will ordinarily grant an injunction unless the defendant can show “strong reasons” why it should not be granted¹⁵⁸. The *Angelic Grace* principles require that: (i) the claimant must be entitled to enforce the clause; (ii) the defendant must be party to or bound by the clause; (iii) the clause must be valid and binding; (iv) the foreign proceedings must fall within the scope of the clause; and (v) there must be no “strong reasons” against granting the injunction¹⁵⁹.
102. These conditions reflect a shift from earlier caution to a more assertive enforcement of contractual obligations. The courts now treat the breach of a jurisdiction or arbitration clause as sufficient justification for injunctive relief, without requiring additional elements such as vexation or oppression¹⁶⁰.
103. The standard of proof required for an anti-suit injunction is high. The claimant must demonstrate a “*high degree of probability*” that a valid arbitration or jurisdiction agreement exists and that it governs the dispute in question¹⁶¹.
104. Importantly, the courts do not require the claimant to first seek a stay in the foreign court. The risk that the foreign court may not enforce the clause — or may do so only after costly and burdensome proceedings — justifies direct intervention by the English court¹⁶².

¹⁵⁷ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 162–164.

¹⁵⁸ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 162–163.

¹⁵⁹ *Aggeliki Charis Compania Maritima v Pagnan (The Angelic Grace)* [1995] 1 Lloyd’s Rep 87.

¹⁶⁰ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 164.

¹⁶¹ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 168.

¹⁶² RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 167–168.

105. Thus, the legal prerequisites for issuing anti-suit injunctions under English law are firmly rooted in the protection of contractual commitments. The *Angelic Grace* principles provide a robust framework that prioritises party autonomy and ensures that agreements to arbitrate or litigate in a specific forum are respected.
106. A key question is whether the New York Convention bars the issuance of anti-suit injunctions. Article II(3) of the NYC requires courts of contracting states to refer parties to arbitration when a valid arbitration agreement exists. However, English courts have consistently held that the NYC does not preclude the issuance of anti-suit injunctions.
107. In *Toepfer v Cargill*, Phillips LJ suggested that parties should rely on Article II(3) to seek a stay in the foreign court. But this view was rejected in later cases. As Raphael explains, “*even where the competing proceedings are in a New York Convention state, the New York Convention does not create a bar to the enforcement of arbitration clauses by way of anti-suit injunction, and further does not provide even a significant factor against the exercise of the court’s discretion to grant the injunction*”¹⁶³.
108. This position was affirmed by the Supreme Court in *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC*¹⁶⁴, which confirmed that the court may enforce the negative obligation not to litigate abroad, even if no arbitration is on foot or contemplated. The court’s power under section 37 of the 1981 Act is not displaced by the Arbitration Act 1996 or the NYC.
109. The Convention does not guarantee that the foreign court will enforce the arbitration clause, and the risk of inconsistent outcomes or procedural disadvantage justifies the grant of an injunction¹⁶⁵.

¹⁶³ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 166–167.

¹⁶⁴ *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35.

¹⁶⁵ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 167–168.

110. In sum, the legal prerequisites for issuing anti-suit injunctions under English law are well-defined. The court must have jurisdiction over the defendant, the arbitration agreement must be binding and applicable to the dispute, and the claimant must show a high probability of breach. Once these conditions are satisfied, the court will ordinarily grant the injunction unless strong reasons are shown to the contrary.

B. Judicial discretion and guiding principles

111. The issuance of anti-suit injunctions under English law is a discretionary remedy governed by equitable principles. While the statutory power under section 37(1) of the Senior Courts Act 1981 is broadly framed, the courts have developed a nuanced framework to ensure that discretion is exercised in a principled and consistent manner.
112. Historically, English courts approached anti-suit injunctions with caution, particularly in cross-border disputes. However, this cautious stance was decisively re-evaluated in *The Angelic Grace*, where Millett LJ declared that “*the time has come to lay aside the ritual incantation that this is a jurisdiction which should only be exercised sparingly and with great caution*”¹⁶⁶. In contractual cases, where a party has agreed not to litigate in a foreign forum, the court has “*no good reason for diffidence*” in enforcing that promise through injunctive relief¹⁶⁷.
113. The discretion to grant an anti-suit injunction is exercised with reference to the *ends of justice*. As Lord Diplock observed in *British Airways Board v Laker Airways*, the court may intervene “*where the foreign proceedings are contrary to equity and good conscience*”¹⁶⁸. This principle has evolved into a structured inquiry focused on the enforcement of legal rights and the prevention of procedural injustice.

¹⁶⁶ *Aggeliki Charis Compania Maritima v Pagnan (The Angelic Grace)* [1995] 1 Lloyd's Rep 87.

¹⁶⁷ *Aggeliki Charis Compania Maritima v Pagnan (The Angelic Grace)* [1995] 1 Lloyd's Rep 87.

¹⁶⁸ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 683.

114. In contractual cases, the court's discretion is guided by the *Angelic Grace* principles, which establish a rebuttable presumption in favour of granting an injunction where foreign proceedings breach an arbitration or jurisdiction clause. The burden shifts to the defendant to demonstrate *strong reasons* why relief should be refused. These reasons may include: delay in seeking relief; submission to the foreign jurisdiction; unclean hands or unconscionable conduct by the claimant; and significant prejudice to third parties or the foreign court.
115. While the discretion remains flexible, the courts have crystallised a general rule: in the absence of strong reasons to the contrary, an anti-suit injunction will be granted to enforce a valid and applicable arbitration agreement.

Par. 2. Balancing party autonomy and procedural fairness in English courts

116. English courts approach anti-suit injunctions through a lens that strongly favours the enforcement of contractual commitments, particularly those embedded in arbitration agreements. This contract-centric view is exemplified by the *Angelic Grace* principles, which establish a rebuttable presumption in favour of granting an injunction when foreign proceedings breach an arbitration or jurisdiction clause. The rationale is straightforward: the defendant has promised not to litigate elsewhere, and without injunctive relief, the claimant would be deprived of its contractual rights in a context where damages are manifestly inadequate¹⁶⁹.
117. This emphasis on party autonomy reflects a broader judicial philosophy that prioritises the sanctity of freely negotiated dispute resolution clauses. English courts do not require the claimant to first seek a stay in the foreign court, recognising that such proceedings may be burdensome, costly, and potentially ineffective¹⁷⁰. Instead, the

¹⁶⁹ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 160–164.

¹⁷⁰ *Dicey, Morris and Collins on the Conflict of Laws* / ed Lord Collins OF MAPESBURY and Professor Jonathan HARRIS. London: Sweet & Maxwell, 2022, p. 670.

courts assert their jurisdiction to enforce the negative obligation not to litigate abroad, even in the absence of ongoing or contemplated arbitration proceedings¹⁷¹.

118. Procedural fairness is addressed not by deferring to foreign courts, but by ensuring that the parties' contractual expectations are upheld. The New York Convention, while mandating referral to arbitration, does not preclude the issuance of anti-suit injunctions. English courts have consistently held that the Convention does not bar such relief and does not even constitute a significant factor against granting it¹⁷².
119. This approach underscores a pragmatic balance: while respecting international comity, English courts prioritise the enforcement of arbitration agreements as a matter of justice. The risk of inconsistent outcomes, procedural disadvantage, and involuntary submission to foreign jurisdiction justifies judicial intervention. In this way, English law safeguards both party autonomy and procedural fairness, ensuring that arbitration agreements are not undermined by strategic litigation abroad.

Section 2. Judicial deference and the reception of anti-suit injunctions in French Law

120. The French legal system approaches anti-suit injunctions with marked caution, reflecting its broader commitment to arbitral autonomy and judicial restraint. While French courts do not issue anti-suit injunctions themselves, they have developed a nuanced stance toward their recognition and enforcement when issued by foreign courts or arbitral tribunals. To understand this approach, Paragraph 1 examines the principle of *compétence-compétence* and the reliance of French judges on arbitral tribunals to resolve jurisdictional disputes. Paragraph 2 then explores how French courts respond to foreign anti-suit injunctions, distinguishing between those grounded in contractual obligations and those perceived as infringing upon procedural sovereignty.

¹⁷¹ *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] 1 WLR 1889 (HL).

¹⁷² RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 167.

Par. 1. The principle of competence-competence and judicial reliance on arbitral tribunals

121. The French approach to *compétence-compétence* is grounded in a strong commitment to arbitral autonomy and judicial restraint. Under this principle, arbitrators are empowered to rule on their own jurisdiction, and state courts must defer to the arbitral tribunal unless the arbitration clause is manifestly void or inapplicable. This dual structure — comprising both the positive and negative effects of *compétence-compétence* — is a hallmark of French arbitration law. The positive effect allows arbitrators to determine their jurisdiction, while the negative effect prohibits courts from ruling on jurisdictional issues before the tribunal has had the opportunity to do so¹⁷³.
122. This framework has been affirmed in several landmark decisions. In Cass. civ. 1re, 20 December 1993¹⁷⁴, the Cour de cassation held that French courts must refrain from ruling on the validity of an arbitration agreement unless it is manifestly void. In Cass. civ. 1re, 6 May 1997 (Dalico)¹⁷⁵, the court confirmed that the validity of an international arbitration agreement is governed by substantive rules of international arbitration, independent of national law, and that arbitrators have the power to rule on their own jurisdiction. Further reinforcement came in Cass. civ. 1re, 13 January 2004¹⁷⁶ and Cass. civ. 1re, 30 March 2004 (Coprodag)¹⁷⁷, where the court reiterated that arbitral tribunals have priority in ruling on their jurisdiction and that premature judicial intervention is incompatible with the principle of *compétence-compétence*.
123. This jurisprudence reflects a coherent legal philosophy that prioritises the integrity of arbitration over strategic litigation. French courts have consistently resisted the temptation to intervene in arbitral proceedings, even when faced with parallel litigation

¹⁷³ Fouchard, Gaillard, Goldman on International Commercial Arbitration / ed. Emmanuel GAILLARD and John SAVAGE. The Hague: Kluwer Law International, 1999, p. 241.

¹⁷⁴ Dalico Contractors v. Municipalité de Khoms El Mergeb, Cour de cassation, Première chambre civile, 20 décembre 1993, pourvoi n° 91-16.828, publié au Bulletin civil 1993 I, n° 372, p. 258.

¹⁷⁵ Municipalité de Khoms El Mergeb v. Dalico Contractors, Cass. civ. 1re, 6 mai 1997, n° 95-17.441.

¹⁷⁶ Mme X v. AGEPI and Axa Assurances Vie, Cass. civ. 1re, 13 janvier 2004, n° 01-11739.

¹⁷⁷ Ouralkali v. Uni-Kod, Cass. civ. 1re, 30 mars 2004, n° 01-14.311.

abroad. As Gaillard argues, anti-suit injunctions—whether issued by courts of the seat or by third-party jurisdictions—generally violate the compétence-compétence principle and should be avoided¹⁷⁸. Instead, French law relies on mechanisms such as the non-enforcement of awards or procedural safeguards within the arbitral process to address jurisdictional disputes.

124. While this approach has been criticised by some common law scholars as overly formalistic, it reflects a coherent legal philosophy that prioritises the integrity of arbitration over strategic litigation. The French model thus offers a counterpoint to the more interventionist stance of English courts, highlighting the importance of judicial restraint in preserving the autonomy and effectiveness of international arbitration.

Par. 2. Recognition and enforcement of foreign anti-suit injunctions

125. Although French courts do not issue anti-suit injunctions themselves, they have shown increasing openness to recognising and enforcing such measures when issued by foreign courts, particularly when they are grounded in contractual obligations.
126. The recognition and enforcement of foreign anti-suit injunctions in France is not governed by a single uniform approach, but rather depends on the origin and nature of the injunction. French courts apply distinct reasoning when the injunction is issued by a court of an EU Member State (A), by a court outside the EU (B), or by an arbitral tribunal (C). Each category raises specific legal and policy considerations, particularly in relation to international public policy, procedural sovereignty, and the role of contractual obligations. The following analysis addresses these three categories in turn.

A. Anti-suit injunctions from EU Member States

¹⁷⁸ GAILLARD Emmanuel. Il est interdit d'interdire : réflexions sur l'utilisation des anti-suit injunctions dans l'arbitrage international. *Revue de l'arbitrage*, vol. 2004, issue 1, par. 21.

127. Within the European Union, the recognition of anti-suit injunctions is constrained by the principle of mutual trust and the Brussels I Regulation. In *Turner v Grovit*¹⁷⁹, the Court of Justice of the European Union held that anti-suit injunctions issued by a court of one Member State against proceedings in another Member State are incompatible with EU law. This position was reaffirmed in *West Tankers*¹⁸⁰, where the ECJ ruled that even anti-suit injunctions issued in support of arbitration agreements could not be recognised if they interfered with the jurisdiction of another Member State's court. These decisions reflect a strict interpretation of mutual trust and judicial sovereignty within the EU, effectively barring French courts from recognising anti-suit injunctions issued by other EU Member States.

B. Anti-suit injunctions from non-EU Member States

128. Outside the EU framework, French courts have shown increasing openness to recognising anti-suit injunctions, particularly when they are grounded in contractual obligations. The landmark case is *In Zone Brands*¹⁸¹, where the Cour de cassation upheld the enforcement of a US anti-suit injunction aimed at protecting an exclusive jurisdiction clause. The court held that such an injunction was not contrary to international public policy, provided it was issued to enforce a pre-existing contractual obligation and did not result from fraud. This reasoning was reaffirmed in the *Deutsche Bank v. RusChemAlliance* consultation, which stated that an anti-suit injunction granted to sanction a breach of a valid arbitration agreement “can and must be recognised in France” if it is duly issued and based on applicable procedural law¹⁸².

¹⁷⁹ *Gregory Paul Turner v Felix Fareed Ismail Grovit, Harada Ltd and Changepoint SA*, Case C-159/02, Judgment of 27 April 2004, ECLI:EU:C:2004:228, [2004] ECR I-03565.

¹⁸⁰ *Allianz SpA v West Tankers Inc* (The Front Comor), Case C-185/07 [2009] ECR I-00663; ECLI:EU:C:2009:69.

¹⁸¹ *In Beverage International SA et M. Lionel X c. In Zone Brands Inc.*, Cass. civ. 1re, 14 octobre 2009, n° 08-16.369 et 08-16.549, publié au bulletin.

¹⁸² *Deutsche Bank AG v. RusChemAlliance LLC*, [2023] EWCA Civ 1144.

129. However, French courts remain cautious when the injunction lacks a contractual foundation. In *Lenovo v IPCOM*¹⁸³, the Paris Court of Appeal refused to recognise a broadly framed American anti-suit injunction that prevented a patent holder from asserting rights before the French court. The court found that the injunction constituted a manifestly unlawful disturbance, infringing the right to bring proceedings before the only competent court for the French part of the European patent. This decision illustrates the importance of distinguishing between injunctions that enforce contractual obligations and those that interfere with procedural autonomy.

C. Anti-suit injunctions issued by arbitral tribunals

130. The recognition of anti-suit injunctions issued by arbitral tribunals presents a distinct set of challenges. In *Gazprom* (C-536/13), the ECJ clarified that arbitral awards containing anti-suit injunctions fall outside the scope of the Brussels I Regulation and are governed by national and international law applicable in the Member State concerned. This opens the door for French courts to recognise such awards, provided they meet the conditions for exequatur under French law. Although French courts have not yet ruled definitively on this issue, the doctrine suggests that recognition is possible if the award is not contrary to international public policy and is issued by a tribunal with sufficient links to the dispute¹⁸⁴.

131. In sum, French courts adopt a nuanced approach to the recognition of foreign anti-suit injunctions. While EU law imposes strict limitations, there is growing acceptance of injunctions from non-EU jurisdictions and arbitral tribunals — particularly when they are grounded in contractual obligations and do not infringe upon core principles of French procedural sovereignty.

¹⁸³ *Lenovo (United States) Inc et al. c. IPCOM GmbH & Co. KG*, Paris, Cour d'appel, Pôle 5, chambre 16, 3 mars 2020, n° 19/21426.

¹⁸⁴ CARRIOU Vincent, et al. Les injonctions anti-suit anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue 1, par. 27.

Part II. Judicial Intervention and the Future of Anti-Suit Injunctions Post-Brexit: Lessons from Unicredit v. RusChemAlliance

CHAPTER 1. LEGAL AND JURISDICTIONAL ISSUES ARISING FROM THE UNICREDIT V. RUSCHEMALLIANCE DECISION

132. The decision of the Court of Appeal of England and Wales in *UniCredit v. RusChemAlliance* has drawn considerable attention, not only for its legal significance but also for its symbolic resonance in the post-Brexit judicial landscape. The case involved the grant of an anti-suit injunction in support of an arbitration seated in Paris, prompting pointed commentary from French scholars. As questioned by Jourdan-Marques, “[i]s French arbitration law so fragile that the English judge must come to its rescue?”¹⁸⁵. The case underscores the challenges of coordinating different legal systems and reveals, in the eyes of some, a persistent misunderstanding of French arbitration law by English courts.
133. Against this backdrop, Part II of this thesis explores the broader implications of the *UniCredit* decision. Chapter 1 examines the legal and jurisdictional issues raised by the case, including the governing law of the arbitration agreement and the rationale behind English judicial intervention. Chapter 2 then reflects on the systemic tensions created by cross-border anti-suit injunctions, considering their impact on judicial cooperation, arbitral autonomy, and the prospects for a more coherent international framework.

Section 1. Factual and procedural context of the case

134. The dispute in *UniCredit v. RusChemAlliance* unfolded against a backdrop of geopolitical tension and contractual complexity, involving multiple parties, jurisdictions, and layers of legal interpretation. To fully grasp the significance of the

¹⁸⁵ JOURDAN-MARQUES Jérémy. *Le juge anglais, juge universel de l'arbitrage*. Paris: Dalloz Actualité, 2024, p. 1 : “Le droit français de l’arbitrage est-il si fébrile au point que le juge britannique ait besoin de voler à son secours ?”

anti-suit injunction granted by the English court, it is necessary to examine both the contractual framework that gave rise to the arbitration agreement and the procedural developments that followed. Paragraph 1 outlines the structure of the underlying contracts and the arbitration clause at the heart of the dispute. Paragraph 2 then traces the procedural trajectory of the case, from the initiation of Russian court proceedings to the English court's decision to intervene.

Par. 1. The arbitration agreement and the development of the dispute

135. To fully understand the legal and strategic dimensions of the *UniCredit v. RusChemAlliance* case, it is necessary to examine both the contractual architecture that shaped the parties' obligations and the procedural steps that led to the English court's intervention. The following paragraphs provide this foundation. Paragraph A outlines the key contractual provisions, including the arbitration clause and governing law, that framed the dispute. Paragraph B then traces the procedural developments, from the initiation of proceedings in Russia to the request for an anti-suit injunction before the English courts.

A. Contractual framework and arbitration clause

136. The dispute in *UniCredit v. RusChemAlliance* arose from a series of high-value contracts relating to the construction of liquefied natural gas and gas processing facilities in Russia. *RusChemAlliance*, a Russian company, entered into two Engineering Procurement and Construction contracts with German contractors. Under these contracts, RCA was required to make advance payments totalling approximately €2 billion, which were secured by on-demand bonds issued by several banks, including UniCredit Bank GmbH.

137. Each of the bonds contained two key provisions: first, they were expressly governed by English law¹⁸⁶; second, they provided for arbitration under the Rules of the International

¹⁸⁶ *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30: "11. This Bond and all non-contractual or other obligations arising out of or in connection with it shall be construed under and governed by English law".

Chamber of Commerce, with the seat of arbitration in Paris and English as the language of the proceedings¹⁸⁷.

138. The arbitration clause was broadly worded, covering “*all disputes arising out of or in connection with the bond*” and was accompanied by a choice-of-law clause applying English law to both contractual and non-contractual obligations.
139. Following the outbreak of war in Ukraine and the imposition of EU sanctions on Russia, the contractors ceased performance of the EPC contracts. RCA responded by terminating the contracts and demanding repayment of the advance payments. When UniCredit refused to honour the bonds — citing EU sanctions as a legal impediment — RCA initiated proceedings before the Arbitrazh Court of St Petersburg and the Leningrad Region, seeking payment of approximately €443 million.
140. UniCredit, in turn, sought an anti-suit injunction from the English courts to restrain RCA from pursuing the Russian proceedings, arguing that they were in breach of the arbitration agreement contained in the bonds. The case thus raised complex questions about the interpretation of arbitration clauses, the governing law of the arbitration agreement, and the jurisdiction of English courts to intervene in support of arbitration seated abroad.

B. Dispute and procedural developments

141. Despite the presence of a clear arbitration clause designating Paris as the seat and English law as the governing law, RCA initiated proceedings before the Arbitrazh Court of St Petersburg and the Leningrad Region, seeking payment under the bonds issued by UniCredit. RCA argued that the arbitration clause was unenforceable under Russian law, particularly in light of Article 248.1 of the Russian Arbitration Procedural

¹⁸⁷ *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30: “12. In case of dispute arising between the parties about the validity, interpretation or performance of the Bond, the parties shall cooperate with diligence and in good faith, to attempt to find an amicable solution. All disputes arising out of or in connection with the bond which cannot be resolved amicably, shall be finally settled under the rules of arbitration of the International Chamber of Commerce, the ICC, by one or more arbitrators appointed, in accordance with the said ICC’s rules. The place of arbitration shall be Paris and the language to be used in the arbitral proceedings shall be English”.

Code¹⁸⁸, which grants Russian courts exclusive jurisdiction over disputes involving sanctioned entities or arising from foreign sanctions.

¹⁸⁸ Russian Federation, *Arbitrazh Procedural Code*, Article 248.1: “*The exclusive competence of arbitration courts in the Russian Federation in disputes involving persons in respect of whom restrictive measures have been introduced*

1. Unless otherwise established by an international treaty of the Russian Federation or by agreement of the parties, according to which the consideration of disputes with their participation is assigned to the competence of foreign courts, international commercial arbitrations located outside the territory of the Russian Federation, the exclusive competence of arbitration courts in the Russian Federation includes cases :

1) in disputes with the participation of persons in respect of which restrictive measures are applied by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union;

2) on disputes of one Russian or foreign person with another Russian or foreign person, if the basis for such disputes is restrictive measures introduced by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union in relation to citizens of the Russian Federation and Russian legal entities.

2. For the purposes of this chapter, persons with respect to whom restrictive measures are applied by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union:

1) citizens of the Russian Federation, Russian legal entities in respect of which restrictive measures are applied by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union;

2) foreign legal entities in respect of which restrictive measures are applied by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union, and the basis for applying such measures is restrictive measures introduced by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union in relation to citizens of the Russian Federation and Russian legal entities.

3. Persons specified in paragraph 2 of this article are entitled to:

1) apply for a dispute to the arbitration court of a subject of the Russian Federation at the place of location or place of residence, provided that there is no dispute between the same persons in the proceedings of a foreign court or international commercial arbitration outside the territory of the Russian Federation on the same subject and for the same reasons;

2) apply in the manner provided for in Article 248 2 of this Code with a statement prohibiting initiating or continuing proceedings in a foreign court, international commercial arbitration, located outside the territory of the Russian Federation.

4. The provisions of this article shall also apply if the agreement of the parties, according to which the settlement of disputes with their participation is within the competence of a foreign court and international commercial arbitration located outside the territory of the Russian Federation, is not feasible due to the application in relation to one of the persons participating in a dispute, measures of a restrictive nature by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union, which create such an obstacle to access to justice for such a person.

5. The provisions of this article do not prevent the recognition and enforcement of a decision of a foreign court or a foreign arbitral award taken at the suit of the person referred to in paragraph 2 of this article, or if that person did not object to the consideration of the dispute by the foreign court, international commercial arbitration located outside the territory of the Russian Federation, including those who did not apply to prohibit initiating or continuing proceedings in a foreign court, international commercial arbitration, located outside the territory of the Russian Federation”.

142. UniCredit responded by applying to the English courts for an anti-suit injunction, asserting that the Russian proceedings were in breach of the arbitration agreement. The application was initially heard ex parte and granted on an interim basis by Mr Justice Robin Knowles. However, at the final hearing, Sir Nigel Teare declined to grant a permanent injunction, reasoning that the arbitration agreement was governed by French law and that England was not the appropriate forum.
143. This decision was appealed, and the Court of Appeal reversed the High Court's ruling. The appellate court held that the arbitration agreement was governed by English law, based on the express choice of law in the bond contracts and the principle that such a choice generally extends to the arbitration clause. The court further found that England had a sufficient interest in enforcing the arbitration agreement, particularly given the risk that the arbitration in Paris might never proceed due to RCA's litigation strategy and the potential issuance of a Russian anti-anti-suit injunction.
144. The Court of Appeal concluded that the English court was the only forum capable of granting effective relief and that the injunction was necessary to uphold the parties' contractual commitment to arbitrate. It therefore issued a final anti-suit injunction requiring RCA to discontinue the Russian proceedings.
145. This procedural trajectory highlights the increasing willingness of English courts to intervene in support of arbitration, even where the seat is abroad. It also underscores the strategic use of anti-suit injunctions to counteract foreign litigation tactics that threaten the integrity of the arbitral process.

Par. 2. The English court's decision to grant an anti-suit injunction despite the Paris seat

146. The Court of Appeal's decision in *UniCredit v. RusChemAlliance* is notable for affirming the English court's jurisdiction to grant an anti-suit injunction in support of an arbitration seated outside England. This marked a significant development in the

post-Brexit landscape, where English courts have regained autonomy to issue such injunctions even in cases involving EU member states or third countries.

147. The central issue before the Court of Appeal was whether the arbitration agreement contained in the bonds was governed by English law, despite the seat of arbitration being Paris. The High Court had previously held that French law governed the arbitration agreement, relying on the curial law of the seat and principles of French international arbitration law. However, the Court of Appeal reversed this finding, applying the framework established in *Enka v Chubb*¹⁸⁹, which clarified that, under English conflict of laws rules, an express choice of law for the main contract generally extends to the arbitration agreement unless displaced by specific factors.
148. The Court found that none of the exceptions identified in *Enka* applied. There was no provision of French law indicating that the arbitration agreement must be governed by French law, nor was there a serious risk that the agreement would be ineffective if governed by English law. Accordingly, the Court concluded that English law governed the arbitration agreement, and that the English courts had jurisdiction to enforce it.
149. The Court also addressed the question of forum. Although the arbitration was seated in Paris, the Court held that England was the appropriate forum to grant relief. It reasoned that the French courts would not issue an anti-suit injunction and that the arbitral tribunal, even if constituted, would face practical limitations in enforcing such relief—particularly in Russia, where the arbitration agreement had already been declared unenforceable under domestic law. The Court emphasised that the English court was the only forum capable of granting effective protection against the Russian proceedings.
150. In granting the injunction, the Court applied the principles from *The Angelic Grace*, reaffirming that strong reasons are required to deny relief where a party has breached

¹⁸⁹ *Enka Insaat ve Sanayi AS v OOO "Insurance Company Chubb"* [2020] UKSC 38, [2020] 1 W.L.R. 4117.

a contractual promise to arbitrate. RCA had not advanced any such reasons. On the contrary, its conduct—initiating proceedings in Russia despite the arbitration clause—was found to be in clear breach of its obligations.

151. The decision thus illustrates the English courts' robust approach to enforcing arbitration agreements, even where the seat is abroad. It confirms that the governing law of the arbitration agreement, rather than the seat, may determine the jurisdiction of the English court to intervene. It also underscores the court's willingness to act where foreign proceedings threaten to undermine the parties' contractual commitment to arbitrate.

Section 2. Reflections of English and French legal reasoning in the decision

152. The *UniCredit v. RusChemAlliance* decision provides a compelling case study in how English and French courts reason differently when confronted with cross-border arbitration disputes. While both jurisdictions recognise the importance of upholding arbitration agreements, their judicial philosophies diverge in terms of procedural posture, interpretative frameworks, and institutional tools. To unpack these differences, the following analysis first examines the rationale adopted by the English Court of Appeal to assert jurisdiction and justify its intervention (Paragraph 1). It then contrasts this reasoning with the principles of French arbitration law, highlighting areas of convergence and tension between the two systems (Paragraph 2).

Par. 1. The rationale used by the English court to assert jurisdiction and urgency

153. The Court of Appeal's decision in *UniCredit v. RusChemAlliance* rests on a dual rationale: the legal justification for asserting jurisdiction and the urgency of the situation created by the Russian proceedings. The court's reasoning reflects a distinctly English approach to judicial support for arbitration, one that prioritises the enforcement of contractual obligations over deference to the seat of arbitration.

154. From a legal standpoint, the English court asserted jurisdiction on the basis that the arbitration agreement was governed by English law. Although the seat of arbitration was Paris, the bonds contained an express choice of English law for all obligations, including non-contractual ones. Applying the principles from *Enka v. Chubb*, the court concluded that this choice extended to the arbitration agreement, and that England therefore had a sufficient interest to intervene¹⁹⁰.
155. This conclusion was reinforced by the court's view that the French legal system, while competent to supervise the arbitration, lacked the procedural tools to issue an anti-suit injunction. The English court noted that "*such a claim cannot be given effect to in France*", and that the French court would not regard an English anti-suit injunction as an interference with its jurisdiction¹⁹¹. This absence of an equivalent remedy in France was treated not as a limitation of French law, but as a justification for English intervention.
156. The urgency of the situation further supported the court's decision. RCA had already initiated proceedings in Russia, and the Russian court had accepted jurisdiction under Article 248.1 of the Russian Arbitration Procedural Code, which renders foreign arbitration agreements inoperable in cases involving sanctions. The English court found that the arbitration in Paris was unlikely to proceed, given the risk of a Russian anti-anti-suit injunction and the practical impossibility of enforcing any arbitral award in Russia¹⁹².
157. In this context, the English court positioned itself as the only forum capable of granting effective relief. It rejected the argument that damages awarded in arbitration could

¹⁹⁰ CARRIOU Vincent, et al. Les injonctions anti-suit anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue 1, par. 13.

¹⁹¹ CARRIOU Vincent, et al. Les injonctions anti-suit anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue 1, par. 21.

¹⁹² CARRIOU Vincent, et al. Les injonctions anti-suit anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue 1, par. 21.

serve as an adequate substitute, noting that such awards would be difficult to enforce and insufficient to prevent the harm caused by the Russian proceedings¹⁹³.

158. This reasoning reveals a fundamental divergence between English and French judicial philosophies. As noted by Jourdan-Marques, the English court appears more concerned with preventing parallel proceedings than with ensuring the arbitration itself takes place. In contrast, the French approach prioritises the availability and integrity of the arbitral process, even if parallel litigation occurs¹⁹⁴.

159. Ultimately, the English court's rationale reflects a pragmatic and contract-centric view of arbitration, one that privileges the enforcement of party autonomy over procedural symmetry. It also illustrates the broader post-Brexit trend of English courts reasserting their role in international arbitration, even where the seat lies abroad.

Par. 2. Alignment and conflict with French arbitration principles

160. The decision in *UniCredit v. RusChemAlliance* raises important questions about the compatibility of English judicial intervention with core principles of French arbitration law. At the heart of the French approach are three interrelated principles: *compétence-compétence*, autonomy of the arbitration agreement, and the principle of validity and effectiveness of the arbitration clause¹⁹⁵.

161. In *UniCredit*, the English Court of Appeal granted an anti-suit injunction to restrain Russian proceedings, despite the arbitration being seated in Paris. The court justified its intervention on the basis that English law governed the arbitration agreement and

¹⁹³ CARRIOU Vincent, et al. Les injonctions anti-suit anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue 1, par. 16.

¹⁹⁴ JOURDAN-MARQUES JérémY. *Le juge anglais, juge universel de l'arbitrage*. Paris: Dalloz Actualité, 2024, p. 3.

¹⁹⁵ Fouchard, Gaillard, *Goldman on International Commercial Arbitration* / ed. Emmanuel GAILLARD and John SAVAGE. The Hague: Kluwer Law International, 1999, para. 417.

that the claimant would otherwise be forced to defend itself in breach of that agreement, incurring costs and risking submission to a foreign jurisdiction¹⁹⁶.

162. This reasoning aligns with French arbitration principles in one respect: both systems recognise the binding nature of arbitration agreements and the importance of upholding party autonomy. French courts have derived from the autonomy principle a rule of validity and effectiveness, which supports the enforcement of arbitration clauses even when the main contract is challenged¹⁹⁷.
163. However, tensions arise in the method of enforcement. French courts do not issue anti-suit injunctions to protect arbitration, even when seated in France. Instead, they rely on the arbitral tribunal to assert its jurisdiction and intervene only at the enforcement stage, in line with the negative effect of *compétence-compétence*¹⁹⁸. In contrast, the English court in *UniCredit* intervened pre-emptively, based on the assumption that arbitration in Paris was unlikely to proceed. From a French perspective, this assumption is speculative and undermines the institutional mechanisms available to support arbitration, such as the *juge d'appui*¹⁹⁹.
164. Moreover, the English court's reliance on its own conflict of laws rules to assert jurisdiction over a Paris-seated arbitration reflects a broader divergence in legal philosophy. French law prioritises the common intention of the parties and the curial law of the seat when determining the applicable law of the arbitration agreement. The English court's decision to override the seat's procedural framework in favour of its own interpretation may be seen as inconsistent with the French emphasis on international comity and judicial restraint²⁰⁰.

¹⁹⁶ *UniCredit v. RusChemAlliance*, [2023] EWCA Civ 1144, paras. 70–85; RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 162–163.

¹⁹⁷ Fouchard, Gaillard, Goldman on International Commercial Arbitration / ed. Emmanuel GAILLARD and John SAVAGE. The Hague: Kluwer Law International, 1999, para. 417.

¹⁹⁸ GAILLARD Emmanuel. Il est interdit d'interdire : réflexions sur l'utilisation des anti-suit injunctions dans l'arbitrage international. *Revue de l'arbitrage*, vol. 2004, issue I, par. 21.

¹⁹⁹ JOURDAN-MARQUES Jérémie. *Le juge anglais, juge universel de l'arbitrage*. Paris: Dalloz Actualité, 2024, p. 3.

²⁰⁰ CARRIOU Vincent, et al. Les injonctions anti-suit anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue 1, par. 21.

165. In sum, while the *UniCredit* decision shares the French commitment to enforcing arbitration agreements, it departs from French principles in its procedural posture and jurisdictional reasoning. The case highlights a fundamental tension between English pragmatism and French formalism, particularly regarding the role of courts in supporting arbitration seated outside their jurisdiction.

CHAPTER 2. RETHINKING JUDICIAL SUPPORT FOR ARBITRATION

166. The decision in *UniCredit v. RusChemAlliance* not only reflects a shift in English judicial practice but also prompts a broader reconsideration of how national courts support arbitration in a fragmented international legal landscape. As anti-suit injunctions become increasingly central to the enforcement of arbitration agreements, they raise important questions about the doctrinal evolution of judicial intervention, the risks of forum competition, and the limits of cross-border cooperation. To explore these issues, Section 1 traces the development of English case law and identifies *UniCredit* as a turning point in the jurisprudence on anti-suit injunctions (Section 1). Section 2 then examines the systemic tensions and comparative challenges posed by such injunctions, considering their implications for legal harmonisation and the future of arbitral autonomy (Section 2).

Section 1. A Turning Point in English Jurisprudence

167. The decision in *UniCredit v. RusChemAlliance* did not emerge in isolation but rather builds upon a long trajectory of doctrinal development in English law. It reflects both continuity and change in how courts approach anti-suit injunctions in the arbitration context. To understand its significance, it is necessary to revisit the evolution of English case law, which has gradually shifted from caution to assertiveness in enforcing arbitration agreements (Paragraph 1). This analysis is followed by a discussion of the 2025 reform of the UK Arbitration Act, which introduces a new default rule on the law applicable to arbitration agreements and may reshape the jurisdictional reasoning adopted in cases like *UniCredit* (Paragraph 2).

Par. 1. The evolution of English case law on anti-suit injunctions in support of arbitration

168. English jurisprudence on anti-suit injunctions in support of arbitration has evolved significantly, culminating in the decision in *UniCredit v. RusChemAlliance*. Historically, English courts have recognised the power to restrain foreign proceedings brought in breach of arbitration agreements, grounded in the equitable jurisdiction to enforce contractual obligations. In *The Angelic Grace*, Millett LJ articulated a decisive shift away from judicial caution, stating that there was “no good reason for diffidence” in granting an injunction where a party had promised not to litigate elsewhere and where damages would be inadequate²⁰¹.
169. This principle was reaffirmed in *AES Ust-Kamenogorsk Hydropower Plant LLP v. Ust-Kamenogorsk Hydropower Plant JSC*, where the Supreme Court held that the negative obligation not to litigate abroad could be enforced by injunction even if no arbitration was on foot or contemplated. The court confirmed that this power derived from section 37 of the Senior Courts Act 1981 and was independent of the Arbitration Act 1996²⁰².
170. The decision in *UniCredit* marks a further development. For the first time, the English Court of Appeal granted an anti-suit injunction in support of an arbitration seated outside England—specifically, in Paris—on the basis that English law governed the arbitration agreement. Applying the framework established in *Enka v. Chubb*, the court found that the express choice of English law in the bond extended to the arbitration clause, and that none of the exceptions (such as mandatory curial law or risk of ineffectiveness) applied²⁰³.
171. This reasoning reflects the English conflict of laws approach, which prioritises contractual clarity and consistency. Under *Enka*, an express choice of law for the main

²⁰¹ RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 163.

²⁰² *AES Ust-Kamenogorsk* [2013] UKSC 35; RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, pp. 160–161.

²⁰³ *UniCredit v. RusChemAlliance*, [2023] EWCA Civ 1144, paras. 70–85; *Enka v. Chubb*, [2020] UKSC 38.

contract is generally presumed to apply to the arbitration agreement, unless displaced by specific factors. The court rejected the argument that French law, as the law of the seat, should govern the arbitration clause, noting that French law does not contain a mandatory rule requiring such governance and that the parties' common intention, as expressed in the contract, pointed to English law²⁰⁴.

172. This approach contrasts sharply with the French method. French law determines the law applicable to the arbitration agreement based on the parties' common intention, interpreted through substantive rules of international arbitration. The curial law of the seat plays a more prominent role, and French courts may presume that the arbitration agreement is governed by the law of the seat unless the parties have clearly agreed otherwise. Moreover, French doctrine does not automatically extend the governing law of the main contract to the arbitration clause without further analysis of party intent²⁰⁵.

173. The UniCredit decision thus illustrates a broader divergence in legal philosophy: English courts favour a rule-based, contract-driven analysis, while French courts adopt a more flexible, intention-based approach rooted in arbitral autonomy and procedural coherence.

Par. 2. The 2025 reform of the UK Arbitration Act and its implications

174. The decision in *UniCredit v. RusChemAlliance* was rendered under the legal framework established by *Enka v. Chubb*, which clarified how English courts determine the law applicable to an arbitration agreement. Under *Enka*, the law governing the arbitration agreement is either (a) the law expressly chosen by the parties or (b) in the absence of such a choice, the law most closely connected to the arbitration agreement. Importantly, the choice of law for the main contract is generally presumed to apply to the arbitration

²⁰⁴ *UniCredit v. RusChemAlliance*, [2023] EWCA Civ 1144, paras. 63–65.

²⁰⁵ CARRIOU Vincent, et al. Les injonctions anti-suit anglaises, soutien inattendu des procédures arbitrales en France. *Revue de l'arbitrage*, vol. 2024, issue 1, par. 13.

clause, unless displaced by specific factors such as mandatory curial law or a risk of ineffectiveness²⁰⁶.

175. In *UniCredit*, the Court of Appeal applied this framework and concluded that English law governed the arbitration agreement, even though the seat of arbitration was Paris. The court found that the express choice of English law in the bond extended to the arbitration clause and that none of the exceptions identified in *Enka* applied. This allowed the English court to assert jurisdiction and grant an anti-suit injunction in support of a foreign-seated arbitration²⁰⁷.
176. However, the legal landscape has since shifted. The 2025 reform of the UK Arbitration Act introduces a new default rule: in the absence of an express choice, the law of the seat governs the arbitration agreement. This legislative change aims to simplify and harmonise the determination of applicable law, addressing criticisms that the *Enka* framework was overly complex and unpredictable. The Law Commission's final report recommended this reform to promote legal certainty and reduce litigation over governing law²⁰⁸.
177. Had this rule been in force at the time of *UniCredit*, the outcome might have been different. The arbitration agreement could have been deemed governed by French law, as the seat was Paris. This would have likely affected the English court's jurisdictional analysis and its willingness to grant an anti-suit injunction. The reform thus raises important questions about the balance between judicial discretion and legislative clarity, and whether future English courts will be more restrained in asserting jurisdiction over foreign-seated arbitrations.

Section 2. Comparative Reflections and Systemic Challenges

²⁰⁶ *Enka v. Chubb* [2020] UKSC 38, para. 170.

²⁰⁷ *UniCredit v. RusChemAlliance*, [2023] EWCA Civ 1144.

²⁰⁸ Law Commission, *Review of the Arbitration Act 1996: Final Report and Bill*, Law Com No. 413, HC 1787, 5 September 2023, para. 12.77. Available at: <https://www.lawcom.gov.uk/project/review-of-the-arbitration-act-1996/>.

178. The systemic challenges raised by cross-border anti-suit injunctions go beyond doctrinal divergence and touch on deeper questions of institutional capacity, legal coherence, and the evolving role of national courts in the international arbitration landscape. These challenges are particularly visible in the *UniCredit* case, which exposed structural asymmetries between legal systems and raised doubts about the adequacy of existing remedies. To explore these issues, the following analysis considers whether the French judiciary's lack of power to issue anti-suit injunctions places it at a disadvantage in the global competition to support arbitration (Paragraph 1), whether French law offers effective alternatives to such relief and how it treats foreign ASIs (Paragraph 2), and whether the English court's intervention in *UniCredit* ultimately supported or substituted the arbitral process (Paragraph 3).

Par. 1. The French judge's lack of power to issue ASIs: a handicap in global judicial competition?

179. The decision in *UniCredit v. RusChemAlliance* raises a critical comparative question: does the French judge's lack of power to issue anti-suit injunctions constitute a handicap in the global judicial competition to support arbitration? In this case, the English Court of Appeal asserted jurisdiction and granted an anti-suit injunction, because French courts lack the procedural tools to issue such relief. As Lord Justice Nugee observed, "*the real choice is not between two competing forums, but between the English court entertaining the claim and the claim not being brought at all*"²⁰⁹.

180. This absence of injunctive power in French law is not based on a principled rejection of anti-suit injunctions per se. French courts have shown increasing openness to recognising foreign ASIs, particularly when they enforce a contractual obligation. However, they do not possess the procedural authority to issue such measures themselves. As a result, parties seeking urgent relief to restrain foreign proceedings may be compelled to turn to jurisdictions like England, where such remedies are available.

²⁰⁹ *Deutsche Bank AG v. RusChemAlliance LLC*, [2023] EWCA Civ 1144, par. 41.

181. This structural limitation has practical consequences. In *UniCredit*, the inability of the French court to grant an ASI was a decisive factor in the English court's assertion of jurisdiction. The English judge reasoned that, although the arbitration was seated in Paris, effective relief could only be obtained in England. This raises the question of whether the French judiciary's procedural restraint undermines its ability to protect arbitration in a competitive transnational context.
182. Some scholars argue that this limitation reflects a principled commitment to arbitral autonomy and judicial restraint. Others suggest that it places French courts at a disadvantage, particularly when parties seek immediate and enforceable protection against foreign litigation. The *UniCredit* case thus invites reflection on whether French law should evolve to include more robust tools for supporting arbitration, or whether its current model — based on post-award review and recognition — remains sufficient.

Par. 2. Recognition of the English ASI in France and available remedies

183. The recognition and enforcement of the English anti-suit injunction issued in *UniCredit v. RusChemAlliance* raises complex questions under French law. Although it is unlikely that *UniCredit* would seek recognition of the ASI in France, the issue remains doctrinally significant. French courts have historically been cautious about recognising foreign ASIs, particularly when they interfere with the jurisdiction of French courts. However, they have shown increasing openness to recognising ASIs issued to enforce contractual obligations, especially when the jurisdictional relationship is not governed by a closed system like the Brussels-Lugano regime²¹⁰.
184. In *Deutsche Bank v. RusChemAlliance*, the English court relied on expert evidence suggesting that French courts would not regard an English ASI as an interference with their jurisdiction, provided it was issued to enforce a valid arbitration agreement. The

²¹⁰ *In Beverage International SA et M. Lionel X c. In Zone Brands Inc.*, Cass. civ. 1re, 14 octobre 2009, n° 08-16.369 et 08-16.549, publié au bulletin; RAPHAEL Thomas. *The Anti-Suit Injunction*. Oxford: Oxford University Press, 2019, p. 16.

court concluded that France lacked the procedural tools to issue such relief, but would not object to its recognition in principle²¹¹.

185. Nonetheless, French recognition is not guaranteed. Some scholars argue that recognition could be refused if the French court considers the English court lacked jurisdiction, particularly given that the arbitration is seated in Paris. Others suggest that recognition is possible if the ASI enforces a pre-existing contractual obligation and does not infringe upon French judicial sovereignty²¹².
186. In terms of remedies, French law does not provide for anti-suit injunctions. However, parties may seek damages for breach of an arbitration agreement, though this remedy is often seen as less effective than injunctive relief. French courts may also issue provisional measures or rely on the *juge d'appui* to support arbitration, but only if they are internationally competent to do so. The absence of direct injunctive power limits the procedural tools available to parties like UniCredit, potentially placing them at a disadvantage when seeking immediate relief against foreign litigation
187. This comparative gap underscores the broader tension between legal systems that empower courts to actively protect arbitration and those that rely on arbitral mechanisms and post-award review. It also raises the question of whether French law should evolve to offer more robust remedies in support of arbitration agreements.

Par. 3. The place of arbitration in the UniCredit decision: support or substitution?

188. The decision in *UniCredit v. RusChemAlliance* invites reflection on the role of arbitration in the broader framework of judicial support. While the English court framed its intervention as a means of enforcing the parties' agreement to arbitrate, the practical effect was to substitute judicial protection for arbitral jurisdiction. Notably,

²¹¹ *Deutsche Bank AG v. RusChemAlliance LLC* [2023] EWCA Civ 1144, paras. 40–41.

²¹² *Deutsche Bank AG v. RusChemAlliance LL*, [2023] EWCA Civ 1144, para. 23; Paris, 13 February 2024, *République d'Inde c. CC/Devas (Mauritius) Ltd, Devas Employees Mauritius Private Limited, Telcom Devas Mauritius Limited*, Cour d'appel de Paris (Pôle 5 – Chambre 16), 13 février 2024, RG n° 22/11819.

no arbitration had been commenced at the time of the decision. RCA had initiated proceedings in Russia, arguing that the arbitration agreement was unenforceable under Russian law, and UniCredit had not initiated arbitration either, stating that it would only do so if RCA pursued its claim through arbitration in Paris²¹³.

189. This procedural context raises questions about whether the anti-suit injunction was granted to support arbitration or to pre-empt it. The English court justified its intervention by citing the risk that arbitration in Paris might never proceed, particularly in light of Russian legislation (Article 248.1 of the Russian Arbitration Procedural Code) that rendered foreign arbitration agreements inoperable in cases involving sanctions. However, this reasoning was speculative: neither party had attempted to initiate arbitration, and no arbitral tribunal had been constituted.
190. From a French perspective, this approach may be seen as undermining the principle of compétence-compétence. French law entrusts arbitrators with the authority to determine their own jurisdiction and expects courts to defer until the arbitral tribunal has ruled. The absence of any attempt to engage the arbitral process in UniCredit suggests that the English court's intervention was not a response to arbitral failure, but a preventive measure aimed at shielding the claimant from procedural inconvenience.
191. This raises a broader concern: when courts grant anti-suit injunctions to avoid the burdens of foreign litigation, do they risk displacing the arbitral tribunal's role? The UniCredit decision illustrates how judicial support for arbitration can, in practice, become judicial substitution. While the intention may be to uphold party autonomy, the result may be to bypass the arbitral process altogether. This tension underscores the need for careful calibration between judicial assistance and arbitral primacy, particularly in cross-border disputes where the seat of arbitration lies outside the court's jurisdiction.

²¹³ *UniCredit v. RusChemAlliance* [2023] EWCA Civ 1144.

Conclusion

192. This master's thesis set out to explore the extent to which national courts — particularly those of the seat or of third-party jurisdictions — may intervene through anti-suit injunctions to safeguard arbitration, and how English and French legal systems reconcile such interventions with the principles of arbitral autonomy and international comity.
193. Through a comparative analysis of English and French law, and an examination of the decision in *UniCredit v. RusChemAlliance*, the study has sought to illuminate the evolving role of anti-suit injunctions in international arbitration and the tensions they generate in cross-border dispute resolution.
194. The comparative analysis reveals that English and French courts approach anti-suit injunctions from fundamentally different legal and philosophical standpoints. English law, grounded in the common law tradition and shaped by equitable principles, treats the arbitration agreement as a substantive contractual obligation. The courts are empowered to enforce this obligation through anti-suit injunctions, even in the absence of ongoing arbitral proceedings. The *Angelic Grace* doctrine establishes a rebuttable presumption in favour of granting an injunction where foreign proceedings breach an arbitration clause, unless strong reasons are shown to the contrary.
195. French law, by contrast, is rooted in civil law principles and places significant emphasis on the autonomy of the arbitral tribunal. The doctrine of *compétence-compétence*, particularly in its negative effect, limits the ability of state courts to intervene before the arbitral tribunal has ruled on its own jurisdiction. French courts do not issue anti-suit injunctions themselves, and have traditionally viewed them with scepticism, particularly when they appear to interfere with the jurisdiction of foreign courts. However, recent jurisprudence suggests a more nuanced stance, especially when anti-suit injunctions are issued to enforce contractual obligations and do not infringe upon French judicial sovereignty.

196. These divergent approaches reflect broader differences in legal culture: English courts prioritise the enforcement of freely negotiated dispute resolution clauses, while French courts emphasise procedural restraint and the primacy of the arbitral process.
197. It therefore appears that the French approach, while more restrained, preserves the legitimacy of arbitration more faithfully. By refusing to substitute itself for the arbitral tribunal, the French judge maintains the integrity of the arbitral process and respects the principle of *compétence-compétence*. In contrast, the English courts, particularly when granting anti-suit injunctions, may risk encroaching upon the arbitral domain. This concern is notably illustrated in *UniCredit v. RusChemAlliance*, where the English court's intervention arguably supplanted the arbitral tribunal's role in determining its own jurisdiction.
198. The *UniCredit* case serves as a focal point for examining the practical implications of these doctrinal differences. Faced with Russian proceedings initiated in breach of an arbitration clause providing for ICC arbitration in Paris, the English Court of Appeal granted an ASI, asserting jurisdiction on the basis that the arbitration agreement was governed by English law. The court reasoned that effective relief could not be obtained in France, where ASIs are not available, nor in Russia, where the arbitration clause had been declared unenforceable under domestic law.
199. This decision raises important questions about the role of national courts in supporting arbitration seated abroad. It illustrates how English courts may intervene to protect arbitration agreements even when the seat lies outside their jurisdiction, provided there is a sufficient legal and practical connection. It also highlights the limitations of French procedural law in offering immediate relief against foreign litigation, and the potential consequences of such limitations in a competitive transnational legal environment.
200. Indeed, while the arbitral tribunal's jurisdiction remained available, UniCredit's decision to seek an anti-suit injunction rather than initiate arbitration proceedings is understandable. In light of the geopolitical and legal context, any award rendered by the tribunal would likely have encountered enforcement barriers in Russia. The anti-

suit injunction thus offered a more immediate and effective means of safeguarding UniCredit's contractual rights — at least initially, before the Russian courts responded with a decision ordering UniCredit to withdraw its English anti-suit injunction²¹⁴.

201. The recognition of foreign ASIs in France remains a complex and evolving issue. French courts have shown increasing openness to recognising ASIs issued by foreign courts, particularly when they enforce valid arbitration agreements and do not interfere with domestic jurisdiction. The decision in *In Zone Brands* marked a turning point, with the *Cour de cassation* holding that such injunctions are not contrary to international public policy when they sanction the breach of a pre-existing contractual obligation.
202. Nonetheless, recognition is not automatic. It depends on several factors, including the competence of the issuing court, the absence of fraud, and the compatibility of the injunction with French public policy. The *UniCredit* case, while not directly tested in French courts, raises doctrinally significant questions about the extent to which French law is willing to accommodate foreign judicial measures that it cannot itself issue.
203. French law does offer alternative remedies, such as damages for breach of arbitration agreements and provisional measures through the *juge d'appui*. However, these remedies are limited by rules of international competence and may not provide the same immediacy or deterrent effect as ASIs. This comparative gap underscores the broader tension between legal systems that actively protect arbitration and those that rely on post-award review.
204. Against this backdrop, to return to the central question posed in the introduction: *to what extent can national courts intervene through anti-suit injunctions to safeguard arbitration, and how do English and French legal systems reconcile such interventions with arbitral autonomy and international comity?*

²¹⁴ Arbitrazh Court of Saint Petersburg and Leningrad, ruling of 28 December 2024, prohibiting UniCredit from initiating arbitration or court proceedings outside Russia and ordering it to take steps to cancel the English anti-suit injunction, with a penalty of €250 million for non-compliance.

205. The answer, as this master's thesis has shown, is multifaceted. National courts can and do intervene to protect arbitration, but the scope and legitimacy of such intervention depend on the legal tradition, procedural framework, and judicial philosophy of each system. English courts have developed a coherent and assertive doctrine that allows for intervention even in support of foreign-seated arbitrations, provided the arbitration agreement is governed by English law. French courts, while procedurally restrained, have begun to recognise the legitimacy of foreign anti-suit injunctions under certain conditions, reflecting a cautious but evolving openness.
206. Both systems seek to reconcile judicial support with arbitral autonomy, but they do so through different balances. In England, the emphasis is on enforcing contractual commitments and preventing procedural injustice. In France, the priority is to preserve the integrity of the arbitral process and avoid premature judicial interference. These approaches are not necessarily incompatible, but they reflect different conceptions of the role of the state in international arbitration.
207. This master's thesis does not advocate for the wholesale adoption of one model over another. Rather, it invites a reflection on the evolving role of national courts in supporting arbitration, and on the conditions under which judicial intervention may be both legitimate and necessary. In a fragmented legal landscape, the task is not to eliminate divergence, but to manage it in a way that respects the diversity of legal traditions while promoting the effectiveness and fairness of international arbitration.

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