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Corruption in International Commercial Arbitration – Selected Issues

Michael Nueber

I. Introduction

Corruption is increasing worldwide. Parallel to this development the number of arbitrations in business-related disputes is increasing as well.[1]) Thus, it might not come as a surprise that arbitration proceedings ever more frequently involve issues of corruption.

Corruption in developing countries amounts to a sum of USD 20 to 40 billion per year, which is approximately 20% to 40% of the worldwide development aid spent yearly.[2]) According to an official estimate from the World Bank the total damage that the affected states have to cope with due to corrupt conduct of their officials amounts to USD two to three thousand billion a year.[3])

Developing countries are not the only ones that are affected by corruption. Sophisticated compliance-programs in international companies or rigorous (inter-)national anti-corruption legislation strongly indicate that corruption is an international phenomenon, which is tackled on different levels.[4])

Arbitral tribunals have to deal with corruption cases on a regular basis. Cases of corruption might arise in both commercial and investment arbitrations. This contribution, however, focuses predominantly on corruption in international commercial arbitration. When confronted with corruption in its proceedings, one of the major questions an arbitral tribunal has to answer is how to determine the applicable law according to which it assesses the corrupt conduct. Other relevant and decisive issues concern the right of the arbitral tribunal to investigate into corruption cases *sua sponte,* the standard of proof as well as the burden of proof to be applied. Further, the potential obligation of the arbitral tribunal to report criminal conduct it becomes aware of in the course of its proceedings to state authorities might be an issue as well.[5])

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[1]) Gary B. Born, International Arbitration: Law and Practice 17 (2012).

[2]) Michael Hwang & Kevin Lim, *Corruption in Arbitration – Law and Reality,* 1 Asian International Arbitration Journal Vol 8/1 (2012).

[3]) 52 CorporAID Magazine, 24 (July/August 2014).

[4]) Therefore, the prohibition of corruption forms part of international public policy, *see* III. E.

[5]) Stephan Balthasar, *Schiedsverfahren im Spannungsfeld zwischen Privatautonomie*

This piece intends to give a brief and non-concluding outline about how to deal with cases of corruption in arbitral proceedings. Its main focus lies with the question of what law(s) an arbitral tribunal has to consider in order to deal with the civil law consequences of corrupt or illegal activity in its proceedings.

II. Selected Issues Regarding Corruption in International Commercial Arbitration

A. Introduction

Dealing with the relationship between international commercial arbitration and corruption has a long tradition among international legal scholars. However, arbitral tribunals have also dealt with corrupt activity in their proceedings for some time now. The most well-known ICC (International Chamber of Commerce)- award concerning this matter dates back to the year 1963. In the ICC Case No. 1110 Judge Lagergren – in his function as sole arbitrator – denied jurisdiction over a dispute about the payment of commissions out of an intermediary agreement which involved elements of bribery.[6]) However, currently it is commonly recognized by both arbitral case-law and scholarly writing that an arbitral tribunal has jurisdiction to decide upon cases of corruption. Furthermore, disputes involving corrupt activity are considered to be arbitrable as well.

An arbitral tribunal might have to deal with cases of corruption in several ways. On the one hand, a contract in dispute could have been established through illegal activity, such as bribery. On the other hand, the contract in dispute can promote criminal activity, such as money laundering. In both cases a number of questions surface which should be answered by the arbitral tribunal.

B. Jurisdiction of the Arbitral Tribunal to Deal with Cases of Corruption

For some time, it was not entirely clear whether an arbitral tribunal was the competent venue to decide upon corruption cases. Open questions concerned the arbitrability of cases of corruption as well as the scope of the arbitration clause itself. Whereas the first issue could be resolved rather easily, the scope of the arbitration clause remained an open issue for some time. Currently, it seems to be commonly accepted by arbitral tribunals and legal scholars that an arbitral tribunal has the right to deal with allegations of bribery if one party explicitly premises its claims or defences on them, because it is the core duty of an arbitral tribunal to

und Compliance, in Privatautonomie und ihre Grenzen im Wandel (Nueber & Przezslowska & Zwirchmayr ed., February 2015).

[6]) ICC Award No. 1110, 47 Yearbook Commercial Arbitration (1996).

deal with and decide upon all issues submitted by the parties.[7]) Several arbitral awards further corroborate this view. In the ICC Case No. 13384[8]) an intermediary claimed his fee out of the agreement. In turn, the principal objected that the contract promoted illegal activity (bribery). In applying the rule just mentioned, the arbitral tribunal concluded that the dispute is covered by the arbitration agreement since one party explicitly premises his defence on the allegation of corruption.[9])

Furthermore, some legal scholars advocate that arbitral tribunals should even be entitled to deal with corrupt activity that in the end leads to the nullity of the main contract. This view is predominantly based on the *doctrine of separability* which separates the legal status of the arbitration agreement from the main contract.[10]) Other legal scholars advocate in favour of the parties' right to terminate the arbitration agreement extraordinarily if corrupt conduct emerges in the course of the arbitration proceedings.[11])

C. The Right of the Arbitral Tribunal to Investigate into Corruption *sua sponte*

However, even in the light of the above-mentioned arguments, it is more sophisticated to assess whether an arbitral tribunal is entitled to investigate into illegal conduct *sua sponte*. Some legal scholars advocate that an arbitral tribunal, which is investigating into corrupt conduct *sua sponte*, is acting *ultra petita*.[12])

Other scholars, however, argue that an arbitral tribunal has the right to investigate into corrupt activity *sua sponte* since corrupt dealings can have an impact on the enforceability of the claims submitted to the tribunal.[13]) Accordingly, such investigations by the arbitral tribunal should be relevant for the resolution of the dispute of the parties and therefore covered by the arbitration clause.[14]) Of course, the prerequisites of due process – *e.g.* the right to be heard – have to be met by an arbitral tribunal which is investigating into corrupt activity *sua sponte*.[15]) Indeed, this opinion seems to be reasonable in the light of the recent increase of corrupt

[7]) Michael Hwang & Kevin Lim, *supra* note 2, at 9.

[8]) Referred to by Stephan Balthasar, *supra* note 5, at footnote 6.

[9]) Stephan Balthasar, *supra* note 5.

[10]) Gary B. Born, International Commercial Arbitration: Law and Practice 50 (2012); Richard Kreindler, Competence-Competence in the Face of Illegality in Contracts and Arbitration Agreements 237 *et seqq.* (2013), who further (arguably) differs between the various types of nullity.

[11]) Stephan Balthasar, *supra* note 5.

[12]) Nigel Blackaby & Constantine Partasides & Alan Redfern & Martin Hunter, Redfern and Hunter on International Arbitration 2.140 (5th ed., 2009).

[13]) Michael Hwang & Kevin Lim, *supra* note 2, at 17; for the duty of an arbitrator to render an enforceable award *see* III.D.

[14]) Michael Hwang & Kevin Lim, *supra* note 2, at 17.

[15]) Michael Hwang & Kevin Lim, *supra* note 2, at 18.

activity worldwide. Furthermore, this view is supported by the fact that the prohibitions of bribery and money laundering form part of international public policy and must therefore be respected by arbitrators in the context of their duty to render an enforceable award.[16])

D. The Burden and Standard of Proof

1. Burden of Proof

Corrupt activity is not easy to prove. A vast number of both commercial and investment arbitration cases deal with questions of proof in regard to corrupt activity.

Sometimes even the allocation of the burden of proof is in question before arbitral tribunals. Without going into much detail, some arbitral tribunals advocated in favour of a complete reverse of the burden of proof and simultaneously let *prima facie* evidence of the party alleging corruption suffice.[17]) On the contrary, other scholars argue in favour of an individual solution, which is based on a case-by-case approach. They advocate that the concrete burden of proof predominantly depends on the applicable law and therefore has to be assessed on a case-by-case basis.[18])

However, the shifting of the burden of proof from the party alleging corruption to the opposing party is inacceptable in the light of considerations of due process. Of course, corruption cases are highly complicated. Furthermore, by their very nature they have regularly been conducted in secrecy, so that it might seem justified to shift the burden of proof to the responding party. Nevertheless, it makes more sense to remain with the traditional burden of proof according to which the alleging party has to prove his position. In the light of the difficulty to prove allegations of corruption it seems, however, justified to lower the standard of proof.

2. Standard of Proof

Arbitral tribunals, both in commercial and investment cases, apply a high standard of proof[19]), when *e.g.* demanding *"clear and convincing evidence"*[20]) to prove allegations of bribery. Accordingly, tribunals requested parties to prove allegations of bribery *"beyond doubt"*.[21]) Furthermore, arbitral tribunals rejected allegations of bribery which have been qualified as pure *"allusions not supported by evidence and based on suppositions"*[22]). Hence, it is not sufficient in order to meet the standard of *"substantive evidence"* that one member of the arbitral tribunal is just suspicious of a party's conduct.[23]) Further prerequisites to prove corrupt activity applied by arbitral tribunals are a *"high degree of probability"*[24]) or *"irrefutable evidence"*[25]). In a very recent investment arbitration case, the tribunal concluded that the application of the high standard to prove bribery is not necessary if the facts regarding bribery emerged in the course of the arbitration.[26])

The ICSID-tribunal in *EDF v. Romania*[27]) gives a concise overview of the predominant approach taken by international arbitral tribunals in order to prove corrupt activity:

> *"There is a **general consensus** among international tribunals and commentators regarding the need for a **high standard of proof of corruption.** The evidence before the Tribunal concerning the alleged solicitation of a bribe is far from being **clear and convincing.**"*[28])

On the contrary, arbitral tribunals have sometimes considered circumstantial evidence sufficient to prove allegations of bribery.[29]) Legal scholars, however, sometimes argue that arbitrators should not deviate from the *"traditional balance of probabilities standard"*[30]), as used in state court proceedings in common law jurisdictions. These commentators advocate in favour of a mere preponderance of evidence to prove corrupt activity in arbitration proceedings.[31])

In fact, it seems it would make sense to lower the standard of proof on a case-by-case basis, like the tribunal in *Metal-Tech v. Uzbekistan*[32]) did. It is a fact that cases of corruption are hard to prove. Where it seems *reasonable* and *justified* an arbitral tribunal might lower the standard of proof for the alleging party.[33])

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16) *See* in more detail III.E.

17) ICC Award No. 6497, 71 Yearbook Commercial Arbitration (1999).

18) Duncan Speller & Kenneth Beale, *Arbitration and bribery: open questions,* CDR Jan 30, 2012.

19) Stephan Wilske & Todd J. Fox, *Corruption in International Arbitration and Problems with Standards of Proof* 496 in Liber Amicorum Eric Bergsten (2011).

20) ICC Award No. 6401, *Westinghouse.*

21) ICC Award No. 5622, *Hilmarton.*

22) *SPP v. Egypt,* ICSID Case No. ARB/84/3.

23) ICC Award No. 7047, *Westacre.*

24) ICC Award No. 6497.

25) *African Holding Company of America v. Republic of Congo,* ICSID Case No. ARB/05/21.

26) *Metal Tech v. Uzbekistan,* ICSID Case No. ARB/10/3; *see also* Deyan Draguiev, *Proving Corruption in Arbitration: Lessons to be learned from Metal-Tech v. Republic of Uzbekistan,* Kluwer Arbitration Blog, Feb 11, 2014.

27) *EDF (Service) Limited v. Romania,* ICSID Case No. ARB/05/13.

28) *EDF (Service) Limited v. Romania, supra* note 27.

29) ICC Award No. 3961; ICC Award No. 8891.

30) Speller & Beale, *supra* note 18.

31) Abdulhay Sayed, Corruption in International Trade and Commercial Arbitration 104 (2004).

32) *Metal-Tech v. Uzbekistan, supra* note 26.

33) *See* also Stephan Wilske & Lars Markert & Laura Bräuninger, *Pertinent Issues in Investment Arbitration against Romania: A Case Study in Challenges and Pitfalls of Investment Disputes in Central and Eastern Europe, in* Austrian Yearbook on International Arbitration (Klausegger et al. eds., 2015).

III. The Applicable Law

A. Introduction

After having established that an arbitral tribunal has jurisdiction to decide upon corrupt activity and how to (best) prove allegations of corruption in arbitration proceedings, in a next step an arbitral tribunal must examine which law(s) are applicable to the corrupt activity.

Since arbitration is first and foremost based on party autonomy, the same applies for the applicable law(s) to corrupt activity. Accordingly, the arbitral tribunal in determining the law(s) applicable to corrupt activity might first consider a parties' choice of law. Furthermore, the *lex arbitri*, the laws of the place of performance, the laws of the potential place(s) of enforcement, principles of international public policy and mandatory rules of law could be of relevance as well.[34])

B. The Choice of Law

If the parties made a contractual choice of law, questioning about the law applicable to allegations of corruption seems a bit out of place. Accordingly, some legal scholars argue that in the case of a parties' choice of law it should not really matter which law(s) the arbitral tribunal might additionally apply to the corrupt conduct in question.[35]) While it is true that *e.g.* bribery of government officials is prohibited by nearly all jurisdictions, there exist, however, further graduations in regard to the scope of the term "corruption". What is permitted in country A and considered as "lobbying" might be prohibited in country B and considered as bribery.

These considerations are most commonly relevant in the context of intermediary agreements. In the course of an intermediary agreement the principal concludes an agreement with the intermediary in the way that the intermediary is obliged to negotiate or obtain a government license or contract within a certain period of time. If the intermediary succeeds, it is common that he receives a certain percentage of the value of the contract he has procured. The intermediary agreement often contains a choice of law as well as an arbitration clause.

C. The Law of the Place of Performance *(lois de police)*

Arbitral tribunals frequently deal with disputes arising out of intermediary agreements. Besides questions of the standard and burden of proof, the law applicable to corrupt activity plays a major role in these proceedings. A question which

34) *See* Speller & Beale, *supra* note 18.

35) Michael Hwang & Kevin Lim, *supra* note 2, at 37.

often occurs is whether – despite a choice of law clause – the law of the place of performance of the intermediary agreement must be considered by the arbitral tribunal as well. In the typical constellation the parties of an intermediary agreement are from country A and country B and agree to the application of the laws of country C to the contract. In case of dispute, the arbitral tribunal has its seat in country D. However, the services out of the intermediary agreement have been rendered in country E. In addition, the intermediary agreement is illegal under the laws of country E, but not under the laws of countries C and D. How should the arbitral tribunal proceed? Is it the arbitral tribunal's duty to apply the mandatory laws of the place of performance (country E) as well?

In the well-known *Hilmarton* case, a sole-arbitrator had to deal with the situation that several laws had to be considered applicable to the alleged corrupt conduct. Subject to the proceedings was an intermediary agreement between a French company and an English intermediary according to which the English intermediary should procure the conclusion of a construction contract with the Algerian government.[36]) The intermediary contract was governed by Swiss law and provided for arbitration in Switzerland. Finally, the intermediary claimed for his fees out of the agreement. In turn, the principal denied paying the intermediary's fee because of the illegality of the intermediary agreement under Algerian law. The sole-arbitrator had to decide whether Algerian mandatory provisions (prohibition of intermediary agreements) apply to the allegations of bribery as well and override the parties' choice of law. Under Swiss law, intermediary agreements are absolutely legal. The sole-arbitrator finally decided that the violation of a foreign mandatory provision of law only then violates Swiss law if such violation qualifies as violation of Swiss morality in accordance with Art 20 para 1 of the Swiss *code des obligations*.[37]) He further confirms that the violation of mandatory Algerian law violates Swiss morality and therefore rejected the claim of the intermediary. Subsequently, the arbitral award was set-aside by the Swiss courts.[38])

Whether and to what extent foreign mandatory provisions of law could be relevant in order to determine the applicable law in cases of corruption has been intensively discussed among legal scholars. However, the majority of legal scholars request for mandatory provisions of foreign law to be applied by an arbitral tribunal a close link to the dispute at hand. In addition, the values protected by the foreign state's mandatory provisions must at least be compatible with the values protected by the applicable law.[39]) Furthermore, Swiss courts developed a sophisticated judicature in order to answer under which circumstances foreign mandatory provisions of law can be relevant for proceedings in Switzerland. As a rule

36) ICC Award No. 5622, Yearbook Commercial Arbitration 105 *et seq.* (1994).

37) Abdulhay Sayed, Corruption in International Trade and Commercial Arbitration 238 (2004).

38) Bundesgericht, April 17, 1990, Rev arb 315 (1993).

39) Alfred Siwy, *Mandatory Rules in International Commercial Arbitration*, Austrian Yearbook on International Arbitration, 165, 169 (Klausegger et al. eds. 2012); different opinion Richard Kreindler, *supra* note 9, at 170.

thumb, a foreign mandatory provision of law can only then be relevant, if such mandatory provision of law also qualifies as Swiss fundamental legal principle.[40]) Accordingly, as already stated by the sole arbitrator in the *Hilmarton* case, a violation of foreign mandatory provisions of law must simultaneously violate Swiss morality.[41])

Legal scholars argue that there is no primary duty of an arbitral tribunal to apply all mandatory provisions of foreign law. Some scholars even want to establish the tribunal's duty to apply mandatory provisions of foreign law only if their violation would offend *international public policy* as well.[42]) This, however, is a too narrow view, especially in regard to the enforceability of an arbitral award.[43]) The better approach relies on the *lex contractus* and examines whether the violation of a specific mandatory provision of foreign law violates provisions of the *lex contractus* as well.[44])

In order to determine what provisions can qualify as mandatory provisions of foreign law, an arbitral tribunal might consider a definition given by an international legal instrument. Article 9 para 1 Rome I Regulation on the Applicable Law to Contractual Obligations[45]) therefore stipulates:

> *"Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation."*

Article 9 para 3 of the Rome I Regulation further defines the nature of mandatory rules of the place of performance as rules that render the performance of the contract unlawful. In addition, the court in applying foreign mandatory provisions of law has to consider their nature and purpose as well as the consequences of their application or non-application. Although the Rome I Convention is not directly applicable to arbitration proceedings, it can serve as a guideline for arbitral tribunals to determine the applicable law in their proceedings[46]) and therefore these definitions can be of high value for arbitrators in order to determine what foreign provisions might qualify as mandatory rules and how to apply them properly.

As can be seen from the above, an arbitral tribunal should carefully consider what provisions of the place of performance of an intermediary agreement might

[40]) BGE Apr 17, 1990, ASA Bulletin 253 (1993).

[41]) Matthias Scherer, *Beweisfragen bei Korruptionsfällen vor internationalen Schiedsgerichten*, 687 ASA Bulletin 19/4 (2001).

[42]) Richard Kreindler, *supra* note 9, at 176.

[43]) *See* III.D.

[44]) Stephan Balthasar, *supra* note 5.

[45]) Regulation (EC) No. 593/2008, June 17, 2008.

[46]) Michael Nueber, *Nochmals: Schiedsgerichtsbarkeit ist nicht vom Anwendungsbereich der ROM-I Verordnung erfasst*, 186 SchiedsVZ (2014).

qualify as mandatory provisions of law and what consequences could evolve in case of their application or non-application. Finally, it is also subject to discussions in scholarly writing whether the parties can exclude mandatory provisions of third countries by agreement. At least in regard to such foreign mandatory provisions of law which qualify as part of the public policy of the *lex contractus* a deviation by parties' agreement has been denied by legal scholars.[47])

D. The Law of the Seat – The Law(s) of the Place(s) of Enforcement

Arbitral tribunals are familiar in considering the public policy of the seat of the arbitral tribunal *(lex arbitri)*.[48]) Hence, arbitral tribunals have to be aware that an award, which violates anti-corruption legislation of the state where the arbitral tribunal has its seat, might be subject to subsequent setting-aside proceedings based on the purported violation of the domestic public policy. An arbitrator therefore must try to determine the content of the public policy of the country of the seat of the arbitral tribunal in order to avoid any violation of the domestic public policy.

Furthermore, arbitrators are obliged to render an enforceable award.[49]) Pursuant to Article V para 2 lit b New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards the recognition and enforcement of an arbitral award can be refused by a national court if the award violates the public policy of the state of enforcement.[50]) Accordingly, when rendering an award arbitrators have to consider the public policy of all relevant jurisdictions in which their award might be enforced.[51]) However, as it is hard to anticipate every jurisdiction where the award might be enforced, arbitrators are obliged to use best endeavours, rather than secure a certain result.[52])

Hence, arbitral tribunals will try to respect as many anti-corruption provisions as possible since they regularly form part of at least domestic public policy. Especially in the case that a party has assets in several jurisdictions it might be advisable to consider the anti-corruption legislation of these countries as well.

[47]) Jette Beulker, Die Eingriffsnormenproblematik in internationalen Schiedsverfahren 246 (2005).

[48]) Vladimir Pavic, *Bribery and International Commercial Arbitration – The role of mandatory rules and public policy*, 676 VUWLR (2012).

[49]) Günther J. Horvath, *The Duty of the Tribunal to Render an Enforceable Award*, 135 J.Int'l.Arb. (2001).

[50]) Dietmar Czernich, New Yorker Schiedsübereinkommen 62 (2008).

[51]) Kreindler, *supra* note 9, at 156.

[52]) Nigel Blackaby & Constantine Partasides & Alan Redfern & Martin Hunter, *supra* note 12, at 11.11.

E. International Public Policy[53])

1. Bribery

Finally, an arbitral tribunal must examine whether an (foreign) anti-corruption provision constitutes part of international public policy. Whereas it is relatively easy for the arbitral tribunal to determine the content of domestic public policy through legal literature and judicature, the same might be more challenging in regard to the international dimensions of public policy. Already in the above mentioned ICC Award No. 1110 Judge Lagergren elaborated on the nature of international public policy in arbitration: *"it cannot be contested that there exists a general principle of law recognised by civilised nations that contracts which seriously violate bonos mores or* ***international public policy*** *are invalid or at least unenforceable and that they cannot be sanctioned by courts or arbitrators".*[54])

An arbitral tribunal might first examine whether an anti-corruption provision in general forms part of international public policy. Already in 1966 an ICC tribunal declared a contract non-enforceable because a predominant part of the purchase price was used to bribe government officials.[55]) The arbitral tribunal reasoned its decision in declaring that such kind of agreements violate international public policy favouring honest commercial dealing.[56]) Also, the International Arbitration Committee of the International Law Association declared that the 1997 OECD Convention on Combating the Bribery of Officials in International Transactions reflects the growing international concern regarding corruption and therefore it is arguable that there exists an international consensus that corruption and bribery are contrary to international public policy.[57]) Furthermore, considering the amount of other international legal instruments tackling bribery, it is widely accepted that nowadays the prohibition of bribery also forms part of international public policy.[58])

2. Money Laundering

Whereas it seems to be commonly accepted that bribery prevention forms part of international public policy, it is questionable whether the same applies for money laundering. A typical case of money laundering regularly emerges in arbitration proceedings if party A claims damages out of the breach of a contract concluded with party B. In the following, the arbitral tribunal renders a respective award. In fact, party A uses the enforceable award to launder money which it has illegally obtained. As soon as party B – in many cases a mere shell company of party A – complied with the award or the award has been enforced against party B the money dates back to a legal transaction.

When it comes to money laundering there is no broad set of international legal instruments available like in the case of bribery. In order to determine whether the prohibition of money laundering forms part of international public policy, the arbitral tribunal might examine whether there exists an international consensus that condemns money laundering. Some legal scholars refer to the provisions against tax evasion and therefore conclude that also money laundering does not form part of international public policy.[59]) Others, however, doubt in the light of the recent international measures that tax evasion still forms no part of international public policy.[60]) Accordingly, these scholars also advocate that it is not justified anymore that money laundering, which recently became a target of international efforts as well, should not be a part of international public policy.[61]) Indeed, in the light of the recent developments in tackling money laundering it seems justified to argue that there exists an international consensus which condemns money laundering.[62]) Thus, the prohibition of money laundering most likely forms part of international public policy as well.

IV. Conclusion

Arbitral tribunals have to deal with corruption in their proceedings on a regular basis. Issues an arbitral tribunal might have to deal with include, *inter alia,* questions of jurisdiction and/or the applicable burden and standard of proof. It is noteworthy that no magic bullet to all these questions exists. Thus, the arbitral tribunal is primarily required to consider all circumstances of the case at hand.

Especially in regard to the law applicable to the civil law consequences of corruption, uncertainty still prevails. An arbitral tribunal must be aware of the different constellations possibly to be considered when determining the law applicable to cases of corruption. For counsels it seems to be advisable that parties to contracts possibly involving more than one jurisdiction, choose a law which most likely maintains the enforceability of their contract.

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[53]) "International Public Policy" is to be understood in the sense of "transnational public policy" and not "national international public policy" as Kreindler, *supra* note 9, at 149 *et seq.*, put it.

[54]) ICC Award No 1110, *supra* note 1.

[55]) ICC Award No. 1399, cited in Note, *General Principles of Law in International Commercial Arbitration,* 1826 Harv.L.Rev (1987).

[56]) Michael Nueber, Transnationales Handelsrecht 71 (2013).

[57]) International Law Association's Interim Report on public policy as a bar to enforcement of international arbitral awards 22 (2000).

[58]) Criminal Law Convention on Corruption of the European Council; UN Convention against Corruption 2005; *see* for further references Kreindler, *supra* note 9, at 157 *et seq.*

[59]) Andrew de Lotbinière McDougall, *International Arbitration and Money Laundering,* 20 American University International Law Review (2005).

[60]) Stephan Balthasar, *supra* note 5.

[61]) Fabian von Schlabrendorff, *Geldwäsche im internationalen Schiedsverfahren,* in Liber Amicorum Peter Schlosser 861 (2005); Stephan Balthasar, *supra* note 5.

[62]) *See e.g.* the Proposal for a Directive of the European Parliament and of the Council on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing, 2013/0025 (COD).