



LALIVE
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Center for International Legal Studies -
Symposium on Arbitration

Addressing Corruption *Sua Sponte*:
Duty or Discretion of the Tribunal?

Christophe Guibert de Bruet

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Overview

- Does an arbitral tribunal have a duty to address issues of corruption *sua sponte*?
- If so, when and in what context does this duty arise?
- If and when such a duty arises, how should an arbitral tribunal proceed in fulfilling this duty?

Factors tending to establish a duty to address issues of corruption *sua sponte*

- The tribunal's public responsibility to the administration of justice
- The risk of becoming complicit in the parties' wrongdoing
- The tribunal's responsibility to issue an enforceable award
- Harm to the process of international arbitration as a dispute resolution mechanism caused by willful blindness
- A duty to report?

Factors weighing against a duty to address issues of corruption *sua sponte*

- Disrupting the balance of persuasion of the parties
- The appearance of partiality
- Concerns of due process and right to be heard
- The delay and expense of the inquiry, as well as its uncertain result
- Exceeding the tribunal's mandate
- Perception of the role of the tribunal (common law arbitrator vs. civil law)

Assuming a duty to inquire into corruption, when would it arise?

- A party insinuates corruption but does not plead it
 - Good faith allegation hampered by lack of evidence
 - Attempt to smear opposing party or witness
- Evidence or testimony strongly suggest that corruption has occurred
- Relevance of the suspected corruption to the issues properly before the tribunal

Discharging a duty to address indications of corruption

- Requesting pleadings on the issue vs. seeking additional evidence
- The tribunal's *ex officio* power to investigate facts
- Standard of proof: should it differ when the tribunal is conducting the inquiry?
- Dealing with recalcitrant or obstructive parties: state court assistance in the taking of evidence
- Procedural safeguards