

IS THERE AN (EMERGING) ETHICAL RULE IN INTERNATIONAL ARBITRATION TO STRIVE FOR MORE CLIMATE FRIENDLY PROCEEDINGS?

Stephan Wilske & Zelda Bank***

「種樹最好的時間是 20 年前。下一個最佳時間是今天。」

(Chinese Proverb)¹

ABSTRACT

This paper deals with the possible emerging ethical obligation in international arbitration to strive for more climate friendly proceedings. As recent climate change induced catastrophes across

* Partner, Gleiss Lutz, Stuttgart (Germany); FCI Arb, admitted to the New York and German bar as well as to the U.S. Supreme Court, the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Appeals for the Second Circuit; Maitrise en droit, Université d'Aix-Marseille III, France; LL.M. (The University of Chicago; Casper Platt Award); Dr. iur (Tübingen); Diploma in International Arbitration (Chartered Institute of Arbitrators); lecturer at the Universities of Heidelberg and Jena; Visiting Professor at the National Taiwan University, College of Law (Spring 2010); Advisory Committee Member of the Swiss Arbitration Academy. Senior Committee Member of the Contemporary Asia Arbitration Journal. Since 2011, he has been a member of the American Law Institute (ALI), since 2016 a member of the Singapore International Arbitration Centre Users Council, since 2018 a fellow of the Asian Institute of Alternative Dispute Resolution (AIADR), and since 2019 a Vice President of the CAAI Court of Arbitration and a member of the ICC Task Force "Addressing Issues of Corruption in International Arbitration." The author can be reached at: stephan.wilske@gleisslutz.com.

** Intern, Gleiss Lutz, Stuttgart (Germany) (May-August 2021); BA Swarthmore College, JD Candidate at Boston University School of Law (May 2022). The author can be reached at: zelda.bank@gmail.com.

¹ The English translation is: "The best time to plant a tree was 20 years ago. The next best time is today."

the globe hit the news, it became blatantly obvious that climate change is a serious issue that needs to be addressed now. An effective solution will have to span across industries and encompass all, including arbitration. With this in mind, these authors will seek to identify whether there is an emerging ethical obligation in international arbitration to have more climate friendly proceedings. To determine this, these authors will look at the current dialogue in the field of international arbitration surrounding climate change including whether there is a need, or desire, for arbitration to go green as this could demonstrate the growing possibility of an emerging moral (or to a certain extent even legally binding) obligation and how this transition to more climate friendly proceedings could occur. To determine whether an ethical obligation is emerging, these authors will outline the framework of ethical obligations in international arbitration. Finally, these authors will conclude that the alarming situation calls for change in all fields, including international arbitration, but that these solutions must be practical. While there will not be one perfect approach, the climate crisis calls for creative, user-friendly solutions that would not only help induce climate-friendly practices but would allow arbitration to retain its special role in dispute resolution and could save users time and money.

KEYWORDS: *arbitral institutions, carbon offsetting, climate change, climate-friendly proceedings, ethical standards, ethics, greener arbitration, green protocol, green representative, regulation, soft law, sustainability*