

## ARTICLES

# SANCTIONS FOR UNETHICAL AND ILLEGAL BEHAVIOR IN INTERNATIONAL ARBITRATION: A DOUBLE-EDGED SWORD?

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*“So, so you think you can tell  
Heaven from Hell  
Blue skys from pain.”*

(Pink Floyd, Wish you were here)

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## ABSTRACT

*The paper deals with two important ethical issues in international arbitration. One issue is the questionable wisdom of a – meanwhile – standard sanction in investment arbitration that if there is proof of corruption at some stage of the investment, the investor loses all rights to the protection of a bilateral investment treaty. Of concern is the question whether a corrupted state may thereby benefit from its own acts and omissions or even maintain a system of corruption in order to shield itself from claims by an investor. Such concern is increased by the ongoing discussion as to whether the standard of proof required to make out a claim of corruption should be lowered. The other issue of increasing concern for the international arbitration community is the arbitration “guerrilla” phenomenon, where it has been argued that a lowering of the standard of proof is required to sufficiently show use of such arbitration guerrilla methods. The question is whether under certain suspicious circumstances a notorious actor should no longer be allowed to benefit from the presumption of innocence but should be forced to argue against a presumption of responsibility for certain acts and behavior. The article concludes that recognizing unethical and illegal behavior in international arbitration and drawing the proper consequences is becoming one of the most important tasks of international arbitrators.*

**KEYWORDS:** *arbitration guerrilla methods, arbitration Taliban methods, Bilateral Investment Treaties, bribery, code of ethics in international arbitration, corruption, ethics, illegal conduct, intimidation of witnesses, investment arbitration, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, presumption of innocence, presumption of responsibility, sanctions, standard of proof, Taiwanese Frigates case, United Nations Convention against Corruption*