The emergence of transnational responses to corruption in international arbitration

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4. TRANSNATIONAL PUBLIC POLICY AND LOIS DE POLICE

4.1 Transnational public policy

In this context, there is little doubt that a transnational rule has been established according to which a contract or an investment that has been reached by means of corruption should not be given effect. Arbitrators have frequently recognized this transnational rule. In his landmark decision in ICC Case No 1110, Judge Lagergren characterized bribery and corruption as ‘contrary to good morals and to international public policy common to a community of nations’. In Wena Hotels v Egypt, the tribunal similarly held that bribery and corruption are contrary to ‘international bones mores’. In World Duty Free v Kenya, the tribunal was ‘convinced that bribery is contrary to the international public policy of most, if not all, States or, to use another formula, to transnational public policy’. In ICC Case No 8891, the tribunal explained that ‘arbitrators do not generally restrict themselves to founding their decision on a given national law but also refer to a general principle of law or to international or transnational public policy’. In ICC Case No 3913, the tribunal held that the unlawfulness of the contract at issue resulted not only from French law but ‘also from the conception of international public policy as recognised by most nations’. And in Spentex v Uzbekistan, the tribunal concluded that corruption in the making of an investment violates the principle of ‘international ordre public’.
Referring Principles:

IV.7.2 - Invalidity of contract due to bribery