The emergence of transnational responses to corruption in international arbitration

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 moraes'. 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

58 Award rendered in 1963 in ICC Case No 1110, published in Wetter (n 14).
59 Wena Hotels Limited v Arab Republic of Egypt, ICSID Case No ARB/98/4, Final Award, 8 December 2000 [M Leigh (President), I Fadallah and D Wallace] para 111.
60 World Duty Free (n 7) para 157.
61 ICC Case No 8891 (n 43) (‘Bien que la corruption soit illicite dans la plupart des ordres juridiques, les arbitres ne se limitent généralement pas à fonder leur décision sur un droit étatique, mais font encore appel à un principe général du droit ou à l'ordre public international ou transnational’).
62 ICC Case No 3913 (1981) in (1984) 111 Clunet 920, 921 (‘Cette solution n'est pas seulement conforme à l'ordre public international tel que la plupart des nations le reconnaît’).
63 Quoted in Betz (n 26) 130.