

A NEW IDEOLOGICAL PARADIGM IN ARBITRATION

The Need for Industry Gold-based Standards of conduct

By Dr Aleka M Sheppard, FCI Arb

Chartered Arbitrator & Mediator – London, UK

INTRODUCTION

1. Regulation, some Regulation, or no man's land? "Which Road do I Take at the cross-road"? 'Alice' asked the Cheshire Catⁱ; "if you don't know where you're going, any road will get you there"; the Cat mused. Not being happy with the answer, Alice inquired further: "Is there another way"?

So, following Alice's curiosity, I set forth to investigate. But first let me explain what the problems are.

2. Like Alice's confusion, there is confusion about arbitration ethics; there is no consensus as to the right way forward. But there are vigorous arguments for Regulation. I call this phenomenon: 'A New Ideological Paradigm'; it encompasses the currently held belief (by a group of arbitration intellectuals) that International Arbitration would benefit from a cross-border binding regulation to harmonise the professional conduct of lawyers and arbitrators who come from multi-cultural backgrounds, different legal systems, and diverse national codes of professional conduct.ⁱⁱ
3. There has been a continuous debate about ethics in commercial and investment arbitration over 20 years. There are fears that if ethical issues are not tackled by the imposition of a Code, the system will be harmed due to a loss of confidence in it by the users. Many thoughtful papers have been written, but I found in several of them repetition of the same entrenched arguments, and 'blind-spot' suggestions for the implementation of a binding Code.

4. Lord Goldsmith QC, at the CIArb 4th annual D.A.S. Convention in December 2016, questioned whether a global regulatory framework is necessary or appropriate and asked: *'what should be the rules that operate? are they currently adequate or do we need to create a new set of standards and, if so, do they need to be global and universal in application or can there be regional or local standards?'*
5. Reflecting on these questions, we must look at the ideological paradigm from a broader perspective. To give you an example, I have worked on the effect of regulation upon behavioural patterns both in the penal system and within the shipping industry. My empirical research revealed that the application of forced regulation can cause extreme reaction against the system and the gatekeepers who enforce regulation. The shipping industry, for example, reacted strongly against EU regulation imposed without consultation but it is prepared to accept regulation emanating from the IMO because the industry feels it has been consulted and participated in the making of regulation which aims to promote 'quality shipping'. I mention this because it has a bearing on my recommendations at the end of this paper.
6. In the London maritime arbitration scene, we have perhaps been insulated from problems such as 'guerrilla tactics' used by attorneys and misdemeanours committed by some members of tribunals.
7. Maritime arbitrators and English lawyers involved in arbitration have formed a close-knit community and that community shares the same values. There has been a common understanding of what is or what is not acceptable, guided by principles stored in our moral conscience. Perhaps this is due to implicit peer pressure, or to a prevailing culture of expecting high standards from professionals; any breaches would probably result in the expulsion of the relevant person from the group by tacit non-acceptance in the group for appointments or instructions. The traditions and professional ethics are held high by practitioners and arbitrators, save for the occasional 'rotten apples' that may be found in the garden!

8. I believe that all of us at this Congress share the same values and strive for the same purpose, that is to do justice to the parties in dispute and perform the task delegated to us with the utmost fairness, integrity, and efficiency. But we cannot ignore what is happening in other spheres of international arbitration.
9. There is no doubt the arbitration market is changing. As Professor Parkⁱⁱⁱ observed: 'arbitration is like the Greek God, Proteus, who had the gift to change shape but not his substance; similarly, arbitration adapts to different legal cultures but retains its vital core to deliver impartial and fair resolution of disputes'.
10. Nowadays, maritime arbitration is not taking place only in London, and those who represent the disputing parties, or act as the appointed arbitrators, are not always from the London legal or commercial community. There are new comers, and they bring with them their cultural predispositions. The insurers, P & I and FD&D clubs, who pay the arbitration costs, are changing their attitude too – the current generation of claims' handlers are more demanding; those who pay the bills of costs at the end of the process want more transparency, procedural efficiency, and reasonable arbitration costs.
11. However, London is still the preferred choice of venue, and English law the preferred choice of law, in the parties' contracts. The disputing parties, of course, have always been international but they have been choosing London for their arbitration because of certainty and predictability, an understanding of the applicable ethical principles, the experience of the professionals, and the support of arbitration by the English courts, all of which underpin the confidence in London arbitration.

Purpose of this paper

12. Against this background, I will give an overview as to what the fuss is about regulating arbitration ethics and why there is urgency for an International Code of Conduct. So, I will address:

- (i) 'How' did it all begin? (briefly);
- (ii) 'Why' is there so much concern?
- (iii) 'What' are the main issues?
- (iv) 'What' has been done?
- (v) 'Where' do we go from here? – further considerations
 - a. Remedies/enforcement?
 - b. Arbitrators' powers on the 'high-seas'
 - c. 'Moral Compass'
 - d. Party appointed arbitrators – predisposition v partiality
 - e. Questions for debate
 - f. Recommendations - do we need to do anything to protect the infrastructure of 'Maritime Arbitration'?

HOW DID IT ALL BEGIN?

13. It was in 1985 when two gurus of international arbitration, Martin Hunter and Jan Paulson proposed a Code of Ethics for arbitrators^{iv}. In 1987 there was the birth of the original IBA Rules of Ethics for International Arbitrators. In 2001, Jonny Veeder QC raised more awareness of poignant ethical issues about the conduct of lawyers when in his 2001 Goff Lecture^v he asked this (much quoted) question:

'what are the professional rules applicable to an Indian lawyer in a Hong Kong arbitration between a Bahraini claimant and a Japanese defendant represented by a NY lawyer? the answer is not more obvious than it would be in London, Paris, Geneva and Stockholm. There is no clear answer'.

14. This was followed in 2002 by a firm call for a Global Code of Ethical Rules in International Arbitration for attorneys by Professor Catherine Rogers who has been advocating the compelling need for such a Code^{vi}. In 2010, Doak Bishop and Margaret Stevens^{vii} repeated the compelling need for a Code of Ethics in International Arbitration. The debate about arbitration ethics continues, mainly at international conferences.

'WHY' IS THERE SO MUCH CONCERN?

15. It is common ground that when clear ethical standards exist and are applied throughout the arbitration jurisdictions there is clarity, certainty, and a level playing field for the disputant parties, so that the confidence of arbitration users in the arbitration system is strengthened.

16. It is also common ground that there has been a growing demand for arbitration, internationally, for a variety of reasons but, primarily, for the essential features of the system: '**voluntariness, flexibility, and party autonomy**'; '**certainty, fairness, and efficiency**'. Although these features contain some conceptual contradictions (i.e. how can efficiency co-exist with flexibility), they characterize a successful arbitration system because they represent what the users want.

17. But Rogers points out^{viii} that there is an alarming absence of ethical regulation in International Arbitration and she observes that:

'International arbitration dwells in an ethical no-man's land. ... The Extraterritorial effect of national ethical codes is usually murky, as is the application of national ethical rules in a non-judicial forum such as arbitration. There is no supranational authority to oversee attorney conduct in this setting, and local bar associations rarely if ever extend their reach so far. Arbitral tribunals have no legitimate power to sanction attorneys, and specialized ethical norms for attorneys in international arbitration are nowhere recorded...'

18. The deep divergences between ethical obligations of attorneys coming from different jurisdictions cause conflict and 'are manifesting themselves in disruptive collisions' she observes. With no controls in the offshore jurisdiction of arbitration, there have been 'guerrilla' tactics used by some attorneys to intimidate their opponents. She goes on to argue that for these reasons there is a compelling need for an International Code of Conduct, which should provide for sanctions.

19. Supporting Rogers' thesis, Bishop^{ix} warned the arbitration community that:

'The lack of clarity as to which ethical rules apply, the existence of conflicting rules and obligations, the non-transparency.... combined with greater public scrutiny, creates a certain instability in the system that could result in a future crisis of confidence.'

He submits that a uniform, binding Code of Ethics is a necessary part of maintaining that public confidence. Such a Code would accomplish three major goals:

'(a) it can clarify the applicable rules and reduce ambiguity; (b) it can level the playing field so that conflicting obligations do not unduly benefit one party at the expense of the other; and (c) it can provide greater transparency, thus building confidence in the System'.

20. Professor William Park,^x in his Freshfields lecture: 'Arbitration's Protean Nature, the Value of Rules and the Risks of Discretion', warned that:

'In a mixed legal culture lacking common procedural roadmap, the loser may feel not only the sting of defeat, but also a sense of injustice.....'

Park argued more recently, in 2014^{xi}, that regulation will level the playing field in areas where the legal cultures differ greatly.

WHAT ARE THE MAIN ISSUES?

21. The following main issues emerge from the body of literature:

- Lack of clarity and uniformity in ethical rules, thus, unethical tactics are invariably used by attorneys (described as 'guerrilla tactics');
- Conflicts between national codes of professional ethics as to what is and what is not permitted in (i) taking witness evidence, (ii) disclosure, (iii) privilege, and (iv) attorney conduct prior to and during the hearing;
- Lack of tribunal's power over legal representatives from diverse jurisdictions;
- Ambiguity as to which law should apply to control attorney conduct in an offshore jurisdiction.
- Disclosure by arbitrators of possible conflict

WHAT HAS BEEN DONE?

22. Great progress has been made with multiple attempts to codify ethics^{xii}, but adverse reactions have been triggered regionally against an International Code^{xiii}.

23. The body of literature on regulation, uniformity and enforcement reveals that there are three schools of thought:

- (a) 'No Regulation' approach: (i.e. Toby Landau QC and others^{xiv} are averse to regulation because they feel that there is a risk of regulating arbitration out of existence by undermining its flexibility);
- (b) The 'hard approach' aiming for a binding Code/Regulation (i.e. Rogers, Bishop push for an internationally enforceable regulation);
- (c) The 'middle road approach for soft law', such as the IBA Guidelines (i.e. Rauber, Rivkin)^{xv}.

24. In 2010, Bishop and Stevens recommended^{xvi} that the ICCA and the IBA should set to work by appointing groups of lawyers from different legal systems and representatives of

arbitral institutions to consider building a consensus around a Code of Ethics, which could be incorporated into the institutional Rules. they thought that:

'this would make the Code binding, creating uniformity and transparency'.

The IBA initiative

25. The IBA acted and issued its Guidelines on party representation in 2013 and on Conflicts of Interest, the revised version, in 2014, to apply to arbitrators in both commercial and investment arbitrations. Apart from the controversial Non-Waivable Red list providing for disclosure of conflict situations by arbitrators (1.4) and the rather confusing classification of disclosable examples in the Red (two types) and Orange Lists, the Guidelines on conflict of interest and on Party Representation are comprehensive, perhaps too comprehensive so that they run the risk of rendering clarity elusive.
26. The Guidelines are not, however, part of English law, and the English judges, when considering the application of section 24 of the Arbitration Act 1996 (circumstances that give rise to serious doubts as to the arbitrator's impartiality) and the test for bias (Porter v Magill [2002] 2 AC 357),^{xvii} will apply the IBA Guidelines only when it is required to do so on a case by case basis (e.g. H v L, M, N& P [2017] EWHC 137 (Comm) Popplewell J explaining the duty of the arbitrator to act independently and impartially; W Ltd v M Sdn Bhd [2016] EWHC 422 (Comm), Knowles J., having considered the Guidelines, did not apply the non-waivable Red list but approached the issues on a 'case-specific' basis^{xviii}). The most serious ethics case is Cofely Ltd v A. Bingham & Knowles Ltd [2016] EWHC 240 (Comm) relating to multiple appointments or nominations of an adjudicator/arbitrator by the same firm (contributing 18% to the adjudicator's income). On the evidence, Hamblen J. commented that the adjudicator showed disregard to the relevance of the professional relationship information^{xix} and to the need for any disclosure. This raised lack of objectivity and an increased risk of unconscious bias^{xx}. But it was the cumulative reasons presented in evidence that led to a decision for his removal for apparent bias under s 24 of the Act.

Initiatives by arbitral institutions

27. All the arbitration Institutions have issued their own rules and guidelines on ethics dealing with the ethical issues which have been debated during conferences and addressed in the body of literature.

28. The ICC in its revised Rules (22.02.2017) adopts the IBA Guidelines and recommends their adoption by arbitral institutions, arbitrators, and parties. Mr Mourre, Président of the ICC, said:

*'By introducing ethical principles and endorsing the IBA Guidelines on Party Representation, the Court aims at ensuring that the **highest standards of honesty and professional conduct are abided with by all participants in the arbitration**. It is of fundamental importance that the **legitimacy of the arbitral process be protected at all times**, and the ICC initiative establishes with clarity the parties' **duty to cooperate in good faith and to behave with integrity for the sake of the fair and efficient resolution of disputes submitted to our rules**' [emphasis added].*

29. The LCIA 2014 Rules tackle the problems arising regarding the conduct of legal representatives in article 18 (in which reference is made to the general guidelines of conduct in the Annex), namely:

- (i) not to engage in activities intended unfairly to obstruct the arbitration;
- (ii) not knowingly to make false statement;
- (iii) not knowingly to rely on false evidence;
- (iv) not knowingly to conceal or assist in the concealment of any document;
- (v) Aspects of witnesses (of fact or experts) are dealt with in articles 20, 21;

Regarding arbitrators:

- (vi) Article 22 grants wide additional powers to the tribunal, inter alia, to deal with issues of disclosure, order the production of relevant documents, and apply rules of evidence;

- (vii) The tribunal is also empowered by article 18.6 to decide if there has been any violation of the ethical standards by the legal representatives and impose sanctions (reprimand, or caution, or any other measures);
- (viii) Arbitrators' duties to disclose any conflict situation are stated in articles 5.3, and 5.4 and their general duty (as under s 33 of the AA 1996) is restated in article 14.4, 14.5;
- (ix) There are controls of the arbitrators' conduct as stated in articles 10.1, 10.2 (revocation and challenges for lack of impartiality, efficiency or diligence) and in article 13. 4 (non-permissible communication between parties and a member of the tribunal);
- (x) Such provisions are not intended to derogate from the arbitration agreement, or any mandatory laws, professional rules or codes of conduct, if and to the extent that any are shown to apply to a legal representative appearing in the arbitration.

30. The CIArb Code of Professional and Ethical Conduct for arbitrators is binding upon the CIArb members and any violation of its provisions will be subject to the Professional Conduct Committee's scrutiny.

31. The LMAA (which is not an administered institution) has published on its website (under the heading 'Code of Ethics') a document titled: 'Advice on Ethics' which is based on the IBA Guidelines 2014. The 'Advice' is for party-appointed maritime arbitrators who accept appointments under the LMAA Terms. An extended and common-sense explanation is provided in the 'Advice' about the meaning of independence (and when disclosure would be advisable), impartiality, competence, diligence, and discretion. I understand that the LMAA has established a committee to deal with violations of ethical standards by its members, if a complaint is made, but no disclosure duties nor a challenge system is included in its Terms.

32. The AAA has had a Code of Ethics for arbitrators in commercial disputes since 1977, which was extensively revised in 2003 and has been effective since 2004, so the AAA is regarded as the pioneer in the provision of very extensive provisions of ethical standards. There are 'Ten Canons' for arbitrators!
33. Space does not permit me to refer to the ethical provisions of all arbitral institutions which can easily be found, but I would like to draw your attention to CIETAC (China Intr. Economic and Trade Arbitration Commission), which has the most extensive and detailed 'Rules for Evaluating the Behaviour of Arbitrators'. One of the rules in article 6(3) provides: 'an arbitrator shall not accept an appointment if due to his or her heavy workload, the arbitrator cannot ensure enough time and energy to handle the case with the necessary level of care'. Such a provision is one of the most important, in practical terms, because delay in the furtherance of a reference is invariably caused by arbitrators who are too busy even to respond to colleagues, or write the award.
34. The CIETAC rules have also established an Arbitration Commission which investigates arbitrators' conduct and can impose sanctions.

WHERE DO WE GO FROM HERE? – FURTHER CONSIDERATIONS

Remedies/enforcement?

35. On the face of this progress, is there still a problem? Most arbitral institutions have acted swiftly to tackle the major issues in their Rules; the LCIA provides specific remedies for breach by way of enforcement. In a way, this is a half-way house to providing an answer to the concerns raised above and a positive step forward. But not all institutional rules provide for enforcement and those provided in art. 18.6 of the LCIA rules are said to be lacking, in practice, real sanction as there is a general disclaimer.^{xxi}
36. In the circumstances, it might be thought that a First issue for consideration should be to include in the Terms or Rules of arbitral bodies suitable and proportionate enforcement which the parties may accept by agreement.

37. Let's face it, the internationalism of arbitration warrants a paradigm shift. In the introduction to the IBA Guidelines, it is stated that the growth of international law firms has generated more disclosures and resulted in increased complexities of the analysis of disclosures and conflict of interest. Parties have more opportunities to use challenges of arbitrators to delay the arbitrations or deny the opposing party of the arbitrator of its choice. Some may be frivolous challenges.

38. So, I propose that a Second issue for consideration should be to provide in the Rules or Terms how to tackle frivolous challenges.

Arbitrators powers on the 'high seas' to control inappropriate conduct

39. The hard liners, advocating the compelling need to regulate arbitration, argue that the arbitrators do not have power over attorneys in offshore jurisdictions.

40. However, it is rather overlooked by them that arbitrators can be proactive and exercise their power as derived from arbitration law, natural justice, and the parties' agreement to control any inappropriate behaviour to protect the integrity of the process.

41. Rivkin^{xxii} endorses this and further explains that the exercise of such power would not conflict with the authority of local bar associations to regulate the conduct of their members because tribunals and local authorities apply different sets of standards, which emanate from different sources of authority and carry different sanctions. Tribunals have control over the proceedings while the local bars need to police the conduct of their members.^{xxiii} This seems to be an answer to hard liners advocating the need for cross-border overarching regulation.

42. Evidently, it falls upon arbitrators to ensure that the integrity of the arbitration system is preserved and remains sustainable but it should be made clear to the parties there is such power. So, a Third issue for consideration must be to insert such a provision in the arbitration Terms or Rules used. In this connection, Rivkin urges^{xxiv} arbitrators:

*'We must stay vigilant to protect the integrity and legitimacy of the arbitration system, lending our force and attention to our common goal of **practising our profession among ladies and gentlemen** and in the best interests of our clients'* (emphasis added).

'Moral compass'

43. Could the moral compass of arbitrators and lawyers be relied upon to solve problems?

44. On issues of disclosure, Rivkin says arbitrators should be able to make decisions - by referring to their own 'moral compass' - on what matters should be disclosable. This, I think, should apply also to decisions whether arbitrators should accept appointments when they are already too busy.

45. A by-product of not referring to the 'moral compass' on issues of early disclosure will inevitably cause a stalemate of the reference, if disclosure and perhaps resignation by the party-appointed arbitrator is later insisted upon by the other disputant party. Further difficulty for co-arbitrators and the other party may arise on the hypothesis that the said arbitrator refuses to do what he/she is requested to do. I have found no guidelines dealing with how the co-arbitrators should handle a challenge of their colleague by one of the parties, which is a very sensitive issue. So, a Fourth issue for consideration is: how co-arbitrators should behave towards each other, generally, during interlocutory matters, the hearing, and award writing. There are some delicate issues here.

46. A frequent phenomenon presenting itself even in London arbitrations, which relates to the 'moral compass' of lawyers, is obstructing the proceedings aiming to defeat the claim of the other party^{xxv}. For example, you see the same spurious arguments on challenges to the tribunal's jurisdiction are submitted in a series of references and invariably by the same lawyers.

47. Presumably, this issue falls upon arbitrators to consider on a case-by case basis, but we also rely on the 'moral compass' and professional standards of lawyers to refrain from such tactics which have a negative impact on costs. It would, therefore, be appropriate for clarity purposes to include this Fifth issue for consideration, perhaps, linked to costs penalties?

Party appointed arbitrators – predisposition v partiality

48. A great deal has been written about standards of impartiality, independence and neutrality of party-appointed arbitrators in the LCIA Arbitration International monthly journal. One realistic observation made by D. Bishop and L Reed^{xxvi} is this truism:

*'While a party will strive to select an arbitrator, who has some inclination or predisposition to favour that party's side of the case such as by sharing the appointing party's legal or cultural background or by holding doctrinal views which fortuitously coincide with a party's case, this need carry no suggestion of 'disqualifying partiality', **provided the arbitrator does not allow this shared outlook to override his/her conscience and professional judgment** (emphasis added). This is a natural and unexceptional aspect of the party appointment system in arbitration but there is a distinction to be drawn between a general predisposition and a positive bias or prejudice. Bias in favour of a party or its case encompasses a willingness to decide a case in favour of the appointing party regardless of the merits or without critical examination of the merits'.*

49. It is important to remember the above distinction when the criteria for assessing bias are applied. For example, the SIAC' Code of Ethics for arbitrators in clause 3.1 states broadly: *'The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator^{xxvii} favours one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties'.*

Questions for debate

- 50. (i) Are the current Ethical Guidelines sufficiently clear to deal with all practical issues?
- (ii) If they are, are they perhaps a dead letter without an effective enforcement?
- (iii) Would an implied understanding or shared values about ethical standards provide, any longer, meaningful means of influencing the conduct of arbitration participants?
- (iv) Would any measures need to be taken to protect the infrastructure and integrity of 'Maritime Arbitration'?

51. In any such debate, we should always bear in mind what the arbitration users want from arbitrators, that is: Balancing fairness and flexibility on the one hand with efficiency and reasonable costs on the other. In the eyes of the parties, striking the right balance is of outmost importance. After all, 'Perceptions by the arbitration users are more important than Reality' and they should not be ignored (this was the theme of my talk at the AAA Arbitration conference in New York in November 2015).

Recommendations

52. Honourable professionals do not need regulation to perform their duties and in maritime arbitration peer standards still exert influence upon conduct.^{xxviii} The purpose of regulation is to deter the would-be recalcitrant. It may, but it may not. So, I believe that the hard liners' approach will stifle the arbitration system due to an inevitably intervening bureaucracy. It can also potentially defeat the purpose of arbitration which is to provide a fair and efficient resolution. If the purpose of a Code/Regulation is to eliminate the 'rotten apples from the garden' (as I mentioned earlier), the arbitration industry should work together to do so, and that depends largely on: (i) the way the arbitration users choose the party-appointed arbitrators, (ii) how proactive the arbitrators are, and (iii) how the arbitral institutions and associations purport to control misconduct.

53. I believe that 'another way at the crossroad' would be for the arbitration industry, at least its Maritime and Trade sectors to work together and adopt a concise summary of the IBA guidelines on conflict of interest and on party representation. A Committee should be set up consisting of (i) representatives of the arbitral institutions, associations, and centres, (ii) a couple of retired judges, and (iii) representatives of the arbitration users, including FD&D clubs and the International Group of P & I clubs. The work is already there, but it requires further thought to improve clarity, and consider also the additional points I raised earlier which would merit consideration. In this way, uniformity and enforcement may be achieved. Perhaps the LMAA may like to take the lead to chart the roadmap for a sustainable arbitral system (a challenge?).
54. The product will have the status of 'Industry Best Practice' and so it could provide a 'checklist' for lawyers and arbitrators. I propose the title should stand out and be: **'Industry Gold-Based Standards of Conduct in Arbitration'**. Such standards should be incorporated by reference in the Rules, or Terms, of arbitral institutions and associations so that they become binding by agreement. This is a very important alternative to imposing a Code or to no regulation; ('another way' for Alice's question). The autonomy of the parties will be maintained; the tribunals will have express power to enforce the standards and protect the integrity of the arbitration by ensuring a level playing field. A further level of enforcement, could be delegated to an Arbitral Commission comprised of one judge, one arbitrator and one industry member to consider complex situations to avoid delays and extra costs resulting from applications to the court.
55. The most successful enforcement of standards in any industry is when they are industry led (e.g. The quality management system established by Intertanko and the 'Oil Majors' to vet the quality of tankers operates as 'Industry Best Practice'. The industry 'vetting' functions as enforcement. This system has contributed to the elimination of 'rust buckets'). We can also eliminate the 'rotten apples' from the arbitration system by enforcing clear Standards, for an *'informal understanding of how things are done'* may

have been true in the past. For the sustainability of arbitration as a means of dispute resolution in the future, we should know where we are going, as the Cheshire Cat alluded to Alice! So, I urge, at least, the Maritime sector of the industry to take control and chart the right way at the cross-road because, if regulation is imposed, arbitration will evolve into a sort of litigation.

ⁱ *The Cheshire Cat in the story of Alice in Wonderland (by Lewis Carroll) explains Wonderland's madness to Alice (is there any parallel with the international scene of arbitration ethics?)!*

ⁱⁱ *The main proponents for this have been Professor Catherine Rogers, see: 'Fit and Function in Legal Ethics: Developing a Code of Conduct for International Arbitration' 2002, Hein Online, at 341, 342, and 'Ethics in International Arbitration', OUP, 2014, 340; Bishop & Stevens: 'The Compelling Need for a Code of Ethics in International Arbitration: Transparency, Integrity and Legitimacy', (2010); D. Bishop 'Ethics in International Arbitration' a Keynote address at the 1st ICCA Conference in South America.*

ⁱⁱⁱ *'Arbitration's Protean Nature, the Value of Rules and the Risks of Discretion' (2002) The Freshfields Lecture.*

^{iv} *Hunter and Paulson, 'A Code of Ethics for Arbitrators in International Arbitration', International Business Lawyer 1985, p 153.*

^v *J Veeder 'The lawyer's duty to arbitrate in good faith', 2002, Arb International 18(4), 431.*

^{vi} *fn iii.*

^{vii} *Bishop & Stevens 'The Compelling Need for a Code of Ethics in International Arbitration: Transparency, Integrity and Legitimacy'.*

^{viii} *fn iii.*

^{ix} *fn vii.*

^x *LCIA Arbitration International, 2003, vol 19, No3, pp279,281,288,300; Park has been cautious and does not support 'rule-rich' procedures but suggests that arbitral institutions or associations could issue 'opt-in' supplements to their Rules.*

^{xi} *'A fair fight, Professional Guidelines in International Arbitration', 30 Arb. Int. (2014) 409.*

^{xii} *The CCBE attempted to produce an all-embracing Code of conduct for European lawyers; Bishop and Stevens produced a draft Code of Ethics for lawyers appearing before international arbitral tribunals; in addition there are the IBA Guidelines and ethical rules of arbitral institutions.*

^{xiii} *e.g 'The IBA Guidelines on Conflicts of Interest: Portuguese courts differ', LexisNexis 19.06.2017.*

^{xiv} *Landau 'A Pause for Thought in International Arbitration', Kluwer Law International (2013), 496,498.*

^{xv} *Dr Martin Rauber: 'The impact of ethical rules for counsel in international commercial arbitration – is there a need for developing international ethical rules?', 2014, International Arbitration Law Review, at 1; David Rivkin: '2014 Seoul Arbitration Lecture: Ethics in International Arbitration'.*

^{xvi} *fn vii.*

^{xvii} *'Whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased' (this is a tough test and it is objective; a subjective opinion of doubt may be unjustifiable or unreasonable and would not be sufficient: Rix LJ in Laker Airways Inc v FLS Aerospace Ltd [2010] 1 WLR 113).*

^{xviii} *See analysis of this case and of the English judges approach in others cases on 'bias': 'An English Judicial Perspective on the 2014 IBA Guidelines on Conflicts of Interest in Int. Arb.' by Hew Dundas, CI Arb IJA (2016) vol. 82, No 3, 331-337.*

^{xix} *see also Eurocom Ltd v Siemens Plc [2014] EWHC 3710 (TCC).*

^{xx} *For 'apparent' or 'unconscious' bias see A v B and X [2011] EWHC 2345 (Comm) Flaux J and commentary by H Dundas (2012) 78 Arbitration, issue 1, 72, CI Arb.*

^{xxi} *C. Bustos 'Ethical Rhetoric: The Failing of the LCIA's Ethical Rules..', Arb. Law Review, (2015) vol 7, article 24, 322.*

^{xxii} *fn xv (Rivkin).*

^{xxiii} *ibid at 24.*

^{xxiv} *ibid at 25.*

^{xxv} *Hunter and Paulson fn iv*

^{xxvi} *LCIA Arbitration International, vol 14 issue 4, 395-430, published on line Dec 2014.*

^{xxvii} *In Maritime Arbitration where each party appoints its own arbitrator and both arbitrators appoint a third or an umpire, when they disagree, issues of possible bias are avoided.*

^{xxviii} *cf Michael Stevens, 'Ethics in international arbitration: some reflections in Singapore', praised the SIAC rules and expressed disillusion that peer standards are diluted in international arbitration, Arbitration 2014, 80(3), 294-298, Westlaw UK.*

Dr Aleka M Sheppard, FCIArb, is a Chartered Arbitrator and Mediator, acting as such mainly in maritime disputes, and a risk management consultant for shipping companies. She is the Founder and Chairman of the London Shipping Law Centre for the furtherance of maritime education. Previously, worked (from 1979) in claims with insurance brokers and the Britannia P & I club, and as a solicitor with HFW. Appointed as the Head of the Shipping Law Unit at University College London in 1993, taught maritime law and pioneered education in risk management; served as Professor until 2011. She is on the LCIA and CIArb panels of arbitrators and a supporting member of the LMAA.