THE DUTY OF ARBITRAL INSTITUTIONS TO PRESERVE THE INTEGRITY OF ARBITRAL PROCEEDINGS

Stephan Wilske *

“明者遠見於未萌，智者避危於無形”¹

(司馬相如 上書諫獵)

* Partner, Gleiss Lutz, Stuttgart (Germany); FCIarb, 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; Maîtrise 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; International Correspondent (Germany) of Revista Română de Arbitraj (Romanian Arbitration Review). Since 2011, he has been a member of the American Law Institute (ALI) and since 2016 a member of the SIAC Users Council. This paper was presented at the 2017 Taipei International Conference on Arbitration and Mediation (August 28 and 29, 2017), which was hosted by The Chinese Arbitration Association, Taipei (CAA) and the Asian Center for WTO & International Health Law and Policy, College of Law, National Taiwan University. For research assistance I thank Geetanjali Sharma. Many thanks go to Yu-fen Chang for her valuable input and sharing of Chinese wisdom, my esteemed colleague Raeesa Rawal for a critical review of the manuscript as well as Sarah Römer for her invaluable assistance in patiently formatting the work of my various night shifts. For all errors and omissions the author assumes sole responsibility. He can be reached at stephan.wilske@gleisslutz.com.

¹English Translation by Yu-fen Chang: “Those who have visions see things before they happen; those who have wisdom avoid dangers before they even appear.” Shang Shu Jian Lie (A Petition against Hunting) by Sima Xiang-Ru, Hang Dynasty.
ABSTRACT

This paper deals with the power and the duty of arbitral institutions to preserve the integrity of arbitral proceedings by upholding and enforcing ethical minimum standards in international arbitration. Institutional arbitration presents significant advantages when it comes to enforcing ethical standards in comparison to ad hoc arbitration. The author highlights the crucial potential role of arbitral institutions in holding the participants of an arbitration accountable. This objective is achieved by the rule-making function of arbitral institutions. The objective may also be achieved by the institutions in exercising their multifarious power at the time of appointment and during the conduct of arbitration proceedings vis-à-vis arbitrators, parties and party representatives. This paper argues for a continued and enhanced involvement of arbitral institutions in preserving the integrity of arbitral proceedings. The author concludes that arbitral institutions could be much more courageous in leading the way other institutions should follow. He calls upon the younger generation of arbitral practitioners to help moving the arbitration community towards the right direction in order to ensure that arbitration delivers what it promises.

KEYWORDS: ad hoc arbitration, admission of counsel, arbitration guerrillas, arbitrator appointment, blacklisting of arbitrators, blacklisting of counsel, codes of conduct, compensation of arbitrators, counsel conduct, cronyism, ethical minimum standards, exclusion of counsel, impartiality and independence, institutional arbitration, integrity of arbitral proceedings, publication of misbehavior, sanctions, suspension of arbitrators, suspension of counsel, transparency