

ETHICS IN ARBITRATION:
PARTY AND ARBITRAL MISCONDUCT

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A. Introduction

- 13.01** International arbitration has been termed the ‘new Eldorado for the modern commercial disputes lawyer’.¹ Just as the fable of great riches led the *conquistadores* to flock to the New World in the 16th century, practitioners from a multitude of jurisdictions have flocked to the realm of international arbitration. In tandem with these new entrants into the international arbitration community, the claims coming to arbitration are more valuable and more complex. The pressure on party representatives to succeed is ever greater and, in an expanded community of arbitration practitioners, there is less incentive to preserve one’s professional reputation and a lower consensus as to what constitutes acceptable or ethical behaviour. Some would say that that we have, in fact, witnessed an ‘ethical “race to the bottom”’ in international arbitration and the obliteration of any such consensus.² Catherine Rogers famously wrote in 2002 that ‘international arbitration dwells in an ethical no-man’s land’.³
- 13.02** These widely observed trends lend credence to assertions that party misconduct in international arbitrations is on the increase.⁴ The level of attention this issue has attracted from practitioners and institutions, as well as scholars, at recent conferences, and in

* The authors are grateful to Catherine Rogers of Penn State Law and Queen Mary, University of London for her assistance with elements of this article. The views expressed in this chapter however, remain those of the authors alone.

¹ Sundaresh Menon, ‘Some Cautionary Notes for an Age of Opportunity’ (2013) *Arbitration* 393, 394.

² Catherine Rogers, ‘Guerrilla Tactics and Ethical Regulation’ in Günther Horvath and Stephan Wilske (eds), *Guerrilla Tactics in International Arbitration* (Kluwer Law International 2013) 313, 314.

³ Catherine Rogers, ‘Fit and Function in Legal Ethics: Developing a Code of Attorney Conduct for International Arbitration’ (2002) 23 *Mich J Int’l L* 341, 342.

⁴ William Rowley, ‘Guerrilla Tactics and Developing Issues’ in Horvath and Wilske (n 2) 21; Günther Horvath, Stephan Wilske and Niamh Leinwather, ‘Countering Guerrilla Tactics at the Outset, Throughout and at the Conclusion of the Arbitral Proceedings’ in Horvath and Wilske (n 2) 33; Peter Rutledge ‘Experiences from Other International Institutions’ in Horvath and Wilske (n 2) 250; and Rogers, ‘Guerrilla Tactics and Ethical Regulation’ in Horvath and Wilske (n 2) 313.

articles, books and blog posts is a clear indication that party misconduct is a real and pressing problem for international arbitration.⁵

- 13.03** The form party misconduct takes and the steps arbitral institutions and practitioners need to take in order to reclaim no-man's land and put the guerrilla back where it belongs, in the jungle, are explored in the first half of this chapter.⁶ The backdrop to this discussion is the IBA's adoption of the Guidelines on Party Representation in 2013 and the LCIA's promulgation of the General Guidelines for Parties' Legal Representatives in 2014.
- 13.04** Ethical standards for international arbitrators have attracted similar amounts of commentary and soft law norms. We have seen the promulgation of the 1987 IBA Rules of Ethics; the 2009 ABA/AAA Revised Code of Ethics for Arbitrators in Commercial Disputes, the IBA Guidelines on Conflicts of Interest in 2004, and the CIArb Code of Professional and Ethical Conduct for Members in 2009. Concerns still exist, however, that despite the existence of detailed codes, rules and training programmes, arbitrators may engage in inappropriate interviews with legal representatives or improper delegation of their duties, charge excessive fees or fail to disclose important conflicts of interest.⁷ The second half of this chapter will therefore consider the means by which arbitrator misconduct should be tackled.

B. Party Misconduct

(a) The nature and extent of the guerrilla tactics

- 13.05** In 2010, Edna Sussman and Solomon Ebere conducted a study into party misconduct in international arbitrations.⁸ They asked 81 practitioners from around the world whether they had witnessed 'guerrilla tactics, whether technically unethical or not' being employed in arbitrations in which they had been involved as either counsel or arbitrator.⁹ Out of those, 55 said that they had and went on to list 10 types of tactics they had witnessed and would categorise as 'guerrilla' in nature.¹⁰ The tactics most widely reported by participants in the

⁵ See, eg, V V Veeder, 'The 2001 Goff Lecture: The Lawyer's Duty to Arbitrate in Good Faith' (2002) 18 *Arb Int'l* 431, 433; Doak Bishop, 'ICCA Keynote Address: Advocacy and Ethics in International Arbitration' (ICCA Rio, May 2013) <www.arbitration-icca.org> accessed 25 September 2015; Toby Landau and J Romesh Weeramantry, 'A Pause for Thought' in Albert Jan van den Berg (ed), *International Arbitration: The Coming of a New Age?* (ICCA Congress Series No 17, Kluwer Law International 2013).

⁶ Günther Horvath and Stephan Wilske, 'Conclusion and Outlook' in Horvath and Wilske (n 2) 341.

⁷ Richard Mosk, 'Attorney Ethics in International Arbitration' (2010) 5 *Berkeley J Int'l L Publicist* 32.

⁸ Edna Sussman and Solomon Ebere, 'All's Fair in Love and War – Or Is It? Reflections on Ethical Standards for Counsel in International Arbitration' (2011) 22 *Am Rev Int'l Arb* 611, 612.

⁹ *ibid* 612.

¹⁰ *ibid* 613.

survey were attempts to stop hearings progressing; abuse of the document disclosure process; discourteous behaviour; acts to surprise the opposition and applications for anti-arbitration injunctions and other approaches to national courts. Less widely reported were issues of *ex parte* communications; witness tampering; the creation of conflicts with arbitrators; frivolous challenges to arbitrators and the creation of delays.

13.06 Examples of more extreme party misconduct such as the use of wiretapping and surveillance,¹¹ the kidnap of an arbitrator,¹² perjury¹³ and the submission of forged documents¹⁴ can be found in awards of ICSID and other international tribunals. There is also anecdotal evidence of criminal behaviour, including the physical intimidation of arbitrators, occurring in international commercial arbitrations held in countries such as Russia.¹⁵

13.07 This list of tactics reported to Sussman and Eberle is a good illustration of the double deontological problem that has concerned the arbitration community for some years.¹⁶ One practitioner's guerrilla tactic may well be another's legitimate practice or even professional obligation. For example, although engaging in *ex parte* communications was a guerrilla tactic reported by five of the practitioners surveyed in 2010 and is generally prohibited under the IBA Guidelines on Party Representation,¹⁷ it is the norm in Chinese arbitrations. Members of arbitral tribunals in China are normally permitted to mediate between the parties.¹⁸ An award issued by the XAC was therefore enforced by the Hong Kong Court of Appeal, despite the fact that the arbitrator had eaten dinner with the winning side (ostensibly to further mediation).¹⁹ The risk of an uneven playing field in relation to

¹¹ *Libananco Holdings Co Limited v Republic of Turkey*, ICSID Case No ARB/06/8, Decision on Preliminary Issues (23 June 2008) and Award (2 September 2011).

¹² *Himpurna California Energy Ltd v Republic of Indonesia*, Final Award (16 October 1999), Yearbook Commercial Arbitration – Volume XXV (2000) 109.

¹³ Affidavit of Floyd Landis in *United States Anti-Doping Agency v Lance Armstrong*, 56 <www.d3epuodzu3wuis.cloudfront.net> accessed 25 September 2015.

¹⁴ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)* (16 March 2001) ICJ Rep 40.

¹⁵ Günther Horvath, Stephan Wilkse and Jeffrey Jeng, 'Lessons to be Learned for International Arbitration?' in Horvath and Wilkse (n 2) 278, fn 693.

¹⁶ See, eg, Cyrus Benson, 'Can Professional Ethics Wait? The Need for Transparency in International Arbitration' (2009) 3 DRI 78.

¹⁷ IBA Guidelines on Party Representation, Guidelines 7-8.

¹⁸ The rules of CIETAC, BAC and all other major Chinese Arbitration Commissions authorise members of the arbitral tribunal or their nominees to mediate between the parties. Hew Dundas and David Bartos, *Dundas and Bartos on the Arbitration (Scotland) Act 2010* (W Green 2014).

¹⁹ *Gao v Keeneye Holdings Ltd* [2011] HKCA 459.

document production and the preparation of witness evidence is also patent. Local bar association rules diverge greatly in respect of these aspects of practice.

(b) How tribunals combat misconduct

- 13.08** The pitch could be levelled by local bar associations harmonising their conduct rules for practitioners operating in international arbitrations. In the absence of such a shift in approach, however, arbitral tribunals have long been dealing with these matters on an *ad hoc* basis by reference to guidance such as the IBA Rules on the Taking of Evidence. It could be argued that, in any event, this localised model is the best method for dealing with party misconduct.²⁰
- 13.09** Arbitrators can devise guidelines or rules for the conduct of the hearing that are carefully tailored to the counsel in front of them and append them to their first procedural order. They can draft timetables to minimise the parties' ability to make spurious requests for extensions to deadlines and make clear what style of advocacy they expect to see from counsel by setting limits on the length of their cross-examination or written submissions.²¹ Tribunals can also deal with misconduct during the hearing itself in a nuanced and graduated manner.
- 13.10** For example, they might, in the first instance, give an indication of the costs they might award arising out of delay tactics being employed or adverse inferences of fact they might make as a result of one party's behaviour before taking more punitive action.²² Counsel will then know that the tribunal is alert to the possibility of guerrilla tactics being used or an ethical imbalance being exploited and is willing and able to censure such behaviour. This may act as a deterrent. Further, the parties may take more notice of rules or orders that have been produced by their arbitral tribunal with their specific case in mind than of a generic code. There are some examples of cases where this individualised approach has worked well.²³

²⁰ Lucy Reed, 'Sanctions Available for Arbitrators to Curtail Guerrilla Tactics' in Horvath and Wilkse (n 2) 93.

²¹ This is a problem highlighted by Michael Hwang in 'Why is There Still Resistance to Arbitration in Asia?' (The International Arbitration Club, Table Talk, Singapore, Autumn 2007).

²² *ibid.* See also Günther Horvath, Stephan Wilkse and Niamh Leinwather, 'Countering Guerrilla Tactics at the Outset, Throughout and at the Conclusion of the Arbitral Proceedings' in Horvath and Wilkse (n 2) 33.

²³ See, eg, *Adem Dogan v Turkmenistan*, ICSID Case No ARB/09/9 where a recommendation from the tribunal appeared to stop the State from putting further pressure on a witness to sign a back-dated document.

(c) The use of inherent powers

- 13.11** In order to address more extreme party misconduct, tribunals may have recourse to the exercise of their inherent (or residual) procedural powers.²⁴ That tribunals possess such powers is apparently universally accepted in the ICSID arena²⁵ and is evidenced by decisions of the Iran-United States Claims Tribunal,²⁶ the Appeal Chamber of the Special Tribunal for Lebanon²⁷ and the WTO's Appellate Body,²⁸ as well as ICSID tribunals.²⁹
- 13.12** The source of these powers is best explained by Chester Brown, who views their existence as a necessary condition to any tribunal fulfilling its core function—the effective and efficient administration of international justice.³⁰
- 13.13** Arbitral tribunals would, of course, need to consider the precise scope of their functions and the express terms of their constitution before concluding that a particular order could be granted pursuant to their inherent or residual powers. They may find that their power to protect the integrity of the proceedings or uphold the interests of justice enables them to change the location of a hearing to protect a witness;³¹ issue an anti-suit injunction to stop the commencement of vexatious parallel proceedings;³² dismiss a claim as an abuse of

²⁴ Martins Paparinskis, 'Inherent Powers of ICSID Tribunals: Broadly and Rightly So' in Ian Laird and Todd Weiler (eds), *Investment Treaty Arbitration and International Law*, vol. 5 (JurisNet 2011).

²⁵ *ibid.*

²⁶ *Iran v United States*, Iran-United States Claims Tribunal, Decision No DEC 134-A3/A8/A9/A14/B61-FT, Decision Ruling on Request for Revision by Iran (1 July 2011); *E-Systems Inc v Iran*, Interim Award No ITM 13-388-FT (4 February 1983), [1983] 2 Iran-US Claims Tribunal Reports 51.

²⁷ STL (Appeal Chamber) Case No CH/AC/2010/2, Decision on Appeal of Pre-Trial Judge's Order Regarding Jurisdiction and Standing (10 November 2010).

²⁸ WTO, *Mexico: Tax Measures on Soft Drinks and Other Beverages*, Appellate Body Report No WT/DS308/AB/R (24 March 2006).

²⁹ *Hrvatska Elektroprivreda dd v Slovenia*, ICSID Case No ARB/05/24, Tribunal's Ruling regarding the Participation of David Mildon QC in Further Stages of the Proceedings (6 May 2008); *Rompetrol Group NV v Romania*, ICSID Case No ARB/06/03, Decision of the Tribunal on the Participation of a Counsel (14 January 2010).

³⁰ Chester Brown, 'Inherent Powers in International Adjudication' in Cesare Romano, Karen Alter, and Chrisanthi Avgerou (eds), *The Oxford Handbook of International Adjudication* (OUP 2014) 828.

³¹ Victoria Orlowski, 'The Perspective of Arbitral Institutions: Upping the Arsenal – Using the ICC Rules to Counteract Guerilla Tactics' in Horvath and Wilkse (n 2) 54.

³² *E-Systems Inc v Iran* (n 26).

process;³³ or exclude counsel who have been brought in at the last minute to create a conflict with an arbitrator.³⁴ Parties in ICSID arbitrations have argued that inherent powers enable tribunals to grant enforceable orders regarding costs (other than awards); non-pecuniary remedies; and conduct investigations into bribery.³⁵

- 13.14** It is difficult to judge how frequently inherent powers are exercised in international commercial arbitrations. However, tribunals should be encouraged to follow their ICSID counterparts and exercise these powers to combat serious misconduct. There might also be scope for the implementation of a set of guidelines that assist tribunals to exercise these powers in a more predictable manner.

(d) The IBA Guidelines on Party Representation

- 13.15** Anecdotal evidence suggests that the IBA Guidelines on Party Representation have already been referenced in some procedural orders.³⁶ However, it is not clear how much more assistance they provide to tribunals in addressing party misconduct of the kind described above.
- 13.16** In the first instance, they appear to have been drafted with the ‘double deontology’ problem in mind, rather than with a view to addressing more serious party misconduct. The body of the Guidelines is devoted to dealing with issues relating to representatives’ submissions to the tribunal, information exchange and disclosure and witness and expert evidence.³⁷ Whilst the exclusion of counsel is permitted under Guideline 6, it is tethered to the scenario where a conflict of interest arises because they have been brought into proceedings after the arbitral tribunal has been constituted.
- 13.17** Exclusion is not a sanction that is expressly included in the list of general remedies for misconduct included at Guideline 26. Tribunals reading these guidelines together may view them as placing a fetter on the exercise of their inherent powers to exclude counsel for other types of misconduct that fundamentally undermine the arbitral process. Further, there is no mention in the list of general remedies for misconduct of the ability to make

³³ *Waste Management Inc v Mexico*, ICSID Case No ARB(AF)/00/3, Decision on Mexico’s Preliminary Objection Concerning the Previous Proceedings (26 June 2001). For further discussion on abuse of process, see David Sandy, ‘The Role of Abuse of Process in Protecting the Integrity of Arbitration Awards’ in Julio César Betancourt (ed), *Defining Issues in International Arbitration: Celebrating 100 Years of the Chartered Institute of Arbitrators* (OUP 2016).

³⁴ *Hrvatska Elektroprivreda dd v Slovenia* (n 29); cf *Rompetrol Group NV v Romania* (n 29).

³⁵ *Paparinskis* (n 24).

³⁶ Sam Chadderton, ‘Arbitration: What Does the Future Hold?’ <www.ibanet.org> accessed 25 September 2015.

³⁷ IBA Guidelines on Party Representation, Guidelines 9-25.

costs awards against party representatives personally or give summary judgment.³⁸ The list of remedies is expressed to be non-exhaustive. However, these tools would be extremely useful additions to the arbitral tribunal's armoury in cases of the most extreme and repeated 'Taliban tactics'.³⁹ Express reference to such powers could therefore be helpful.

- 13.18** Eduardo Zuleta, Paul Friedland and Cyrus Benson, members of the IBA Task Force that drafted the Guidelines, have argued that whilst experienced practitioners used to dealing with ethical imbalances may not find the Guidelines useful, they will educate newcomers and foster best practice in less developed nations where local bar association rules are less onerous.⁴⁰ There must be a danger however, that they could be used by wily practitioners intent on disrupting proceedings as a means of raising procedural motions.⁴¹
- 13.19** Further, for those concerned by the double deontology problem, the Guidelines will not displace otherwise applicable mandatory laws, professional or disciplinary rules or vest in arbitral tribunals powers that are reserved to bar associations and other professional bodies.⁴² The uneven playing field that exists in some cases will not therefore be eliminated. It is thus difficult to argue against the fact that 'having a new set of different rules, issued by a body different from, and with no authority over those which are responsible for the existing rules, is likely to increase uncertainty and confusion, rather than resolve the issue'.⁴³

(e) The LCIA Rules

- 13.20** Many of the same criticisms could be levelled at the 2014 LCIA Rules. In particular, the sanctions available to arbitral tribunals to punish misconduct are fairly weak. The only measures expressly provided for at Article 18.6 are a written reprimand or caution as to future conduct. These admonishments would remain confidential and may not therefore deter further misconduct by counsel.⁴⁴ It is interesting to note that the final version of the LCIA Rules omits a power to exclude counsel from the whole or part of an arbitration for

³⁸ *ibid*, Guideline 26.

³⁹ Horvath, Wilkse and Jeng (n 15).

⁴⁰ Chadderton (n 36); Cyrus Benson, 'The IBA Guidelines on Party Representation: An Important Step in Overcoming the Taboo of Ethics in International Arbitration' (2014) 1 *Paris J Int'l Arb* 47.

⁴¹ Michael Schneider, 'President's Message: Yet Another Opportunity to Waste Time and Money on Procedural Skirmishes: The IBA Guidelines on Party Representation' (2013) 31 *ASA Bull* 497.

⁴² IBA Guidelines on Party Representation, Application of Guidelines, 4.

⁴³ Schneider (n 41) 499.

⁴⁴ Sapna Jhangiani and Khaled Moyeed, 'How Far Do the New LCIA Guidelines for Parties' Legal Representatives and the IBA Guidelines on Party Representation Go?' (*Kluwer Arbitration Blog*, 21 May 2014) <www.kluwerarbitrationblog.com> accessed 25 September 2015.

misconduct, in contrast to the IBA Guidelines on Party Representation. Further, there is no reference to any power to refer misconduct to the representative's professional or regulatory authority. These sanctions had both been included in previously circulated drafts of the Rules.

- 13.21** It is not clear from the LCIA Rules to what extent a counsel's breach of the General Guidelines will rebound on their client.⁴⁵ In particular, Article 28.4 of the Rules does not cross-refer to the General Guidelines for the Parties' Legal Representatives when it states that tribunals should take into account the parties' conduct of the arbitration when awarding costs. The IBA Guidelines on Party Representation are far clearer in that respect.⁴⁶
- 13.22** There are however, certain features of the LCIA Rules which might assist tribunals in combating party misconduct. Each party to an LCIA arbitration must ensure that its legal representatives have agreed to comply with the General Guidelines pursuant to Article 18.5. This may save tribunal time and argument when drafting their first procedural order. The General Guidelines oblige party representatives not to engage 'in activities intended unfairly to obstruct the arbitration or to jeopardise the finality of any award, *including repeated challenges to an arbitrator's appointment or to the jurisdiction or authority of the Arbitral Tribunal known to be unfounded by that legal representative*'.⁴⁷
- 13.23** This is an improvement on the IBA Guidelines on Party Representation which define misconduct as a breach of the specific Guidelines (eg on representatives' submissions to the tribunal, disclosure and witness evidence) 'or any other conduct that the Arbitral Tribunal determines to be contrary to the duties of a Party Representative'.⁴⁸ Further, if the parties attempt to add a legal representative to their team, after the formation of the tribunal, the tribunal can withhold its consent to the change.⁴⁹ This gives tribunals some control over who appears before them.

⁴⁵ John Zadkovich and Emily Caldwell, 'In the Spotlight: The Parties' Legal Representatives Subject to Conduct Guidelines under the Draft LCIA Rules 2014' (2014) 17(3) Int ALR 73.

⁴⁶ IBA Guidelines on Party Representation, Guideline 26(c).

⁴⁷ General Guidelines for the Parties' Legal Representatives (Annex to the LCIA's Arbitration Rules), para 2 (emphasis added).

⁴⁸ IBA Guidelines on Party Representation (n 42) 3.

⁴⁹ 2014 LCIA Rules, Art 18.

C. Arbitral Misconduct

(a) Who regulates the arbitrators?

- 13.24** Catherine Rogers argues that the market for international arbitrator services is far from a free and transparent one.⁵⁰ The pre-eminent qualification for acting as an arbitrator is still one's record of prior appointments. Moreover, it is difficult for parties and their counsel to make a fully informed choice about appointing a particular arbitrator because of the difficulty they will have in ascertaining their track record. International arbitration remains, to some extent, therefore the domain of what has been termed an 'elite corps' of arbitrators.⁵¹
- 13.25** In many states, arbitrators enjoy an absolute or qualified immunity.⁵² They can therefore only be held liable in circumstances where they are proven to have engaged in deliberate, bad faith malfeasance or unjustified withdrawal.⁵³ Further, national courts can normally only protect parties against the worst excesses of arbitrator misconduct at the enforcement stage. That is because national arbitration laws usually give the courts limited grounds on which to refuse enforcement. As a result, the primary regulators of arbitral misconduct are the institutions via their appointment, party selection and challenge procedures.⁵⁴
- 13.26** Many of the leading institutions incorporate ethical rules into their arbitration rules that deal with the conduct of hearings and arbitrators' qualifications.⁵⁵ These will normally cover the obligation to be impartial and/or independent and to disclose certain information regarding that impartiality or independence obligation. However, very few institutions have clear and comprehensive codes of conduct for arbitrators and there is an inconsistency in the ethical standards required by the institutions.⁵⁶
- 13.27** It has been argued that the institutions should take a more active role in policing and preventing arbitrator misconduct.⁵⁷ In particular, they could improve the mechanisms for investigating complaints of misconduct received from parties and others and strengthen the sanctions that they can impose if misconduct is found to have occurred. International

⁵⁰ Catherine Rogers, 'The Vocation of the International Arbitrator' (2005) 20 Am U Int'l L Rev 957.

⁵¹ David Hacking, 'Ethics, Elitism, Eligibility: A Response' (1998) 15(4) J Int'l Arb 73.

⁵² Rogers (n 50).

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ Menon (n 1).

⁵⁶ *ibid.* Menon compares the differing disclosure obligations on arbitrators imposed by the LCIA and ICC Arbitration Rules and the AAA Code of Ethics for Arbitrators.

⁵⁷ Rogers (n 50).

arbitration does not after all have the luxury of impressive courthouses, wigs and robes and other ceremonial devices that collectively render an appearance of ‘correctness’ and legitimacy to both the process and the decision maker.⁵⁸ It must bolster public confidence by implementing transparent disciplinary processes for arbitrators.

(b) The CI Arb disciplinary procedures

13.28 The CI Arb disciplinary procedures are a good example of the kind of approach to arbitral misconduct that could and should be taken by all arbitration institutions. A separate Professional Conduct Committee of CI Arb, exists to investigate complaints from the public and service users, and if necessary, discipline members.⁵⁹ The Committee is not formed solely of lawyers but has lay members. It will not only investigate complaints of breaches of the CI Arb Code of Professional and Ethical Conduct, but also accusations that tend to show that an arbitrator’s conduct has fallen significantly below the standard expected of a competent professional acting in the private dispute resolution field. The complainant has the right to appeal any decision not to uphold their complaint.

13.29 CI Arb disciplinary tribunals have the power to suspend or expel a member, withdraw his chartered status or make an order for costs against him, if a complaint is made out. For example, John Campbell, a former CI Arb President, was expelled from the Institute and ordered to pay £3,000 in costs for failing to deliver an award for four years.⁶⁰ CI Arb’s Board of Trustees also have a discretion to publish a full report of the disciplinary proceedings without anonymising the names of the individuals involved, although we have found few examples of this in practice.⁶¹

D. Conclusion

13.30 We should not ignore the fact that 32% of the experienced arbitration practitioners surveyed by Sussman and Eberé in 2010 said that they had not encountered ‘guerrilla tactics’ or that ‘several respondents volunteered that they saw guerrilla tactics employed to a much greater extent in litigation’.⁶² However, there are undoubtedly features of international arbitration that make it a uniquely fertile ground for the activities of

⁵⁸ Judith Resnik, ‘Tiers’ (1984) 57 S Cal L Rev 837, 854.

⁵⁹ 2014 CI Arb Regulations, para 10.

⁶⁰ *The Chartered Institute of Arbitrators v John D Campbell QC*, Decision of the Disciplinary Tribunal of CI Arb (5 May 2011) <www.ciarb.org> accessed 25 September 2015.

⁶¹ CI Arb, ‘How CI Arb Investigates Complaints of Misconduct Against its Members’ <www.ciarb.org> accessed 25 September 2015.

⁶² Sussman and Eberé (n 8) 612.

arbitration guerrillas and terrorists.⁶³ These include the confidentiality of proceedings, the arbitrators' lack of executive power and the parties' ability to exploit an uneven ethical playing field.⁶⁴ This will continue to be the case, if steps are not taken to combat the guerrillas.

- 13.31** The IBA Guidelines on Party Representation and the LCIA Rules raise awareness of the issue of party misconduct and may assist less experienced arbitrators in identifying and addressing potential problems of double deontology early on in proceedings. They are however, no panacea, especially in relation to serious cases of party misconduct. In those situations, the sanctions made available to the tribunal are not as strong as might be hoped for. There is also a risk that both initiatives will deflect arbitral tribunals' attention away from the broad inherent powers that they can already utilise to regulate misconduct and protect the integrity of the proceedings.
- 13.32** Efforts should be focused within arbitration institutions on establishing better means of investigating and sanctioning arbitrator misconduct. This should involve the implementation of a transparent system with real teeth akin to that in place within CIArb. If they do not make such changes, disenchantment may well grow and the golden age of arbitration may be tarnished.

⁶³ Robert Pfeiffer and Stephan Wilkse 'The Emergence of the Guerrilla Tactics Phenomenon in International Arbitration' in Horvath and Wilkse (n 2) 16.

⁶⁴ *ibid.*