Session 3B: Breakout Session
II. Do Anti-Corruption Investigations and Anti-Bribery Legislation Influence or Affect International Arbitration?

Scene Setter
Christopher Stephens, Asian Development Bank

Chair
Robert Pé, Orrick, Herrington & Sutcliffe

Speakers
AB Mahmoud, Dikko & Mahmoud
Justice Ellen Gracie Northfleet, Independent Arbitrator
Kate Yin, Fangda Partners

Rapporteur
Catherine Duggan, Harvard Business School
The Fight against Corruption

- OECD Antibribery Convention – 1997
- UN Convention against Corruption – 2005
- UK Bribery Act - 2010
- Italy Anticorruption Law - 2012
- Brazil Anticorruption Law – 2014
Corruption and Arbitration

- When the jurisdiction is perceived as prone to corruption
- Arbitration offers neutrality and quality of resolution
The Misuse of Arbitration

• It may give the means to mask corruption:
  • Confidentiality
  • Limitations of the Arbitral Tribunal
Limitations of the Arbitral Tribunal

- Lack of Sub Poena powers
- Jurisdiction is limited to the commercial dispute between the parties
- What standard of proof to apply when considering a corruption allegation:
  - Beyond reasonable doubt
  - Ballance of probabilities
  - Clear and convincing proof
• NEITHER turn Arbitration into a safe heaven for corruption by laundering corrupt contracts, acts and practices

• NOR admit challenges to Arbitral awards based on non-substantiated allegations of corruption
• An allegation of corruption falls into the concept of arbitrability, since it may taint the contract and make it void

• The denial of enforcement based on corruption falls into the narrow group of grounds known as “Public Policy” both in international and national terms