contextual framework should be rewarded by improved arbitration practice overall and across many jurisdictions.

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Guerrilla Tactics in International Arbitration

Edited by Gunther J. Horvath and Stephan Wilske

Reviewed by Edna Sussman

The subject of guerrilla tactics in international arbitration has been a focal point of both formal presentations at conferences and informal conversations throughout the international arbitration community during the last few years. Guerrilla tactics, coupled with the clashes in ethical obligations between counsel from different jurisdictions, led to a growing recognition that it was necessary to enunciate harmonized norms to assure a fair process. The development of the International Bar Association's Guidelines for Party Representatives in International Arbitration and the new arbitration rules of the London Court of International Arbitration are manifestations of the consensus that these issues had to be addressed.

Two reasons are typically offered for the changes in the practice of arbitration that have made the issue of guerrilla tactics and the disparities in ethical obligations of such pressing concern. First, arbitration has evolved from a forum for a speedy, inexpensive and pragmatic decision on trade disputes to a forum that resolves sophisticated legal disputes with millions of dollars, and often hundreds of millions, at stake. The size of the amount at issue can drive counsel over the line from zealous representation to guerrilla tactics; differences in ethical obligations that give a party an advantage are problematic. Second, as international arbitration has grown, there has been an influx of both counsel and arbitrators new to the practice. With the entry of new practitioners not schooled in the norms of the practice and not part of the former elite international arbitration "club," there is no shared understanding of appropriate conduct and no in-group induced constraint on behavior.

Mssrs. Horvath and Wilske were early commentators on the subject of guerrilla tactics and bring a wealth of experience and knowledge to the subject. They have succeeded in eliciting the assistance of noted international arbitration practitioners, each of whom contributed a chapter to this collection. The result is a very useful set of discussions on the subject.

The book starts with an analysis of precisely what constitutes a guerrilla tactic, a term not easily defined in the arbitration context. The definition, depending on one's perspective, can range from just playing arbitration hardball to criminal acts. The authors discuss various categories of guerrilla tactics. They identify unacceptable conduct such as delay tactics, frivolous challenges, bribery, use of surveillance methods, fraud, intimidation of arbitrators and witnesses, threats of violence and blatant abuse of state authority. However, they also identify other conduct, which may or may not be viewed as a guerrilla tactic, such as withholding evidence for late production, introducing evidence through witnesses to ambush opposing counsel, disregard of professional courtesies, and excessive document requests. Interestingly, the authors also bring up the issue of guerrilla tactics by the arbitral tribunal itself and provide several examples such as being unavailable for deliberations, demonstrating bias by constantly objecting to even basic procedural orders, and, most egregiously, disseminating information about the tribunal's deliberations and thought process.

Who should be charged with the responsibility for regulating guerrilla tactics has been a central question in the debate about guerrilla tactics and what, if anything, should be done about them. The discussion offered in the book of the role that can be played by local bar associations, local courts, arbitral institutions, and the tribunal itself provides a useful analysis of their powers to regulate conduct, and the wisdom of charging any one of these players with that role. The unique issues that arise in the context of arbitrations involving states and state entities are flagged for the reader. Perhaps most importantly, the book reviews the tools to curb guerrilla tactics that may be available to each of those entities and provides step-by-step guidance in the arbitral proceeding.

The authors included an extensive consideration of what they referred to as the "bag and baggage" of national systems in the search for insights on how to deal with guerrilla tactics in international arbitration. Chapters are devoted to diverse systems of law including common law, civil law, post socialist, Asian, African, Arabic Islamic, and Southeast Asian, as well as the treatment of guerrilla tactics at international courts and institutions, including the International Court of Justice, the World Trade Organization and the Court of Arbitration for Sport.

Consideration of ethical regulations governing conduct by counsel is an essential element of any discussion of guerrilla tactics, and Catherine Rogers, the leading scholar on the subject, has contributed a thoughtful and comprehensive chapter. She highlights

the fact that there had been no ethical standards that unambiguously governs all counsel in arbitration and emphasizes the importance of such standards. However, she notes that "mechanisms and legal justifications for enforcement…remain subject to many open questions."

The authors conclude with an explanation of their objectives in organizing the book. They have achieved their own goals. The book successfully provides a categorization of guerrilla tactics, offers the perspectives of all those involved in the arbitration process, gives guidance on tools for arbitrators to consider and provides information about best practices in various jurisdictions that could potentially be of assistance in international arbitration in combating guerrilla tactics.

Those involved in international arbitration as both arbitrators and counsel will find this book both instructive and useful in fulfilling their roles most effectively. Arbitrators will find useful tips on how to control guerrilla tactics while counsel will learn what conduct is considered by the international arbitration community to be unacceptable and how they can endeavor to curb such conduct by their adversaries.

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