"TAMING THE GUERRILLA IN INTERNATIONAL COMMERCIAL ARBITRATION" BY NAVIN G. AHUJA: BOOK REVIEW

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I. INTRODUCTION

International arbitration is often praised for being a flexible, private, and efficient way to solve commercial disputes across borders. But in recent years, this process has faced a growing challenge, especially parties using "guerrilla tactics". These are deliberate, bad-faith procedural strategies that frustrate the arbitral process, delay resolution, inflate costs, and undermine the legitimacy of the system itself.[1] Navin G. Ahuja's, "Taming the Guerrilla in International Commercial Arbitration" extensively identifies and offers an analytical examination of the rising threat posed by such abuses.

II. OVERVIEW AND SUMMARY

The opening chapter lays down a conceptual foundation, it combines doctrinal analysis, practical examples, and empirical insight to problematise an increasingly prevalent phenomenon. Common yet often undefined, these include delaying arbitrator appointments, filing frivolous objections, overloading the other side with paperwork, or using parallel litigation to disrupt proceedings. Such tactics exploit arbitration's flexibility and lead to weak enforcement, exposing systemic flaws in the arbitration ecosystem. Chapter two outlines arbitration's fundamentals i.e. neutrality, confidentiality, flexibility, enforceability, and finality. At the same time putting forth the vulnerabilities of the same such as delays, cost inflation, and procedural abuse. It contrasts judges' accountability with arbitrators' expertise, flags rising costs and underused expedited procedures, and notes the uneven impact of emergency relief. The author critically essentially warns that without stronger procedural discipline and innovation, arbitration risks losing legitimacy, urging reforms to balance autonomy with efficiency, predictability, and resilience against abuse.

The third and the fourth chapter deals with the main aspects and workings of guerilla tactics in international arbitration. The book traces their evolution from jurisdictional objections to witness coaching, ex-parte communications, anti-arbitration injunctions, and even arbitrator misconduct, showing how each tactic derails fairness and efficiency. The author relied on Surveys (2010 to 2021) to confirm their rise despite ethical codes. He links their persistence to cultural clashes, due process

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[1] NAVIN G. AHUJA, TAMING THE GUERRILLA IN INTERNATIONAL COMMERCIAL ARBITRATION (Springer 2022).

fears, weak sanctions, opaque procedures, and pressures from third-party funding, overworked arbitrators, and absent appeals. By exposing these systemic enablers, the author argues that taming guerrilla tactics requires stronger regulation, cultural sensitivity, and procedural clarity without sacrificing arbitration's ideals. The most important chapter of the book, fifth chapter, provides us with solutions to control guerilla tactics in international arbitration. This section discusses the the role of tribunals, arbitral institutions, courts, and bar associations in deterring and penalising such tactics. The potential solutions will be analysed further.

Later chapters examine Hong Kong's judicial sanctions against guerrilla tactics. The discussion then broadens to advocacy for model arbitration clauses embedding conduct standards and sanction mechanisms, ethical guidelines for counsel and arbitrators, and enhanced early case management. The author also discusses challenges such as "virtual guerrilla tactics" witnessed during the COVID-19 pandemic.

III. ANALYSIS

A. Controlling Guerrilla Tactics Through Cost Sanctions

The book's core contribution is its discussion of controlling guerilla tactics. One of the most compelling mechanism is the role of the tribunal itself, the arbitrators can deploy pragmatic tool of applying cost sanctions towards the parties engaging in such behaviour. Cost sanctions refer to a tribunal's authority to order one party to bear the arbitration-related costs. Traditionally, international arbitration adheres to the principle of "costs follow the event", or what is often called the "loser pays" rule.[2]

The author reframes this principle beyond a mere accounting exercise. He highlights that costs can serve as more than compensation and act as a behavioural correction mechanism. In other words, cost sanctions are not just about who wins or loses, they are about how parties behave during the proceedings. Some of the instances could be making excessive document requests, filing frivolous interim applications or abusing cross-examinations. If the parties have engaged "excessively" then they may end up paying more than just their own legal bills.[3] Arbitral rules are catching up with this view. For instance, the ICC Rules 2021 (Article 38(5)) explicitly allow tribunals to consider the

[2] JEAN KALICKI & MOHAMED ABDEL RAOUF, EVOLUTION AND ADAPTATION: THE FUTURE OF INTERNATIONAL ARBITRATION 465-503 (Kluwer Law International 2019).
[3] LORD HACKING & SOPHIA BERRY HACKING, DEFINING ISSUES IN INTERNATIONAL ARBITRATION: CELEBRATING 100 YEARS OF THE CHARTERED INSTITUTE OF ARBITRATORS (Oxford University Press 2016).

conduct of parties particularly, whether they conducted themselves in a "cost-effective and expeditious manner".[4] Similarly, the LCIA Rules 2020 (Article 28.4) and the IBA Guidelines on Party Representation recognize that parties and their counsel can be held financially accountable for wasting the tribunal's time or sabotaging the process.[5]

The imposition of cost sanctions can be advantageous because they are procedurally flexible. Tribunals can issue cost orders not only at the conclusion of the proceedings but also during the process through interim cost orders, a feature that deserves much more attention. More importantly, cost sanctions are less intrusive than other punitive measures. Unlike dismissing a party's claims or refusing to admit evidence which may raise due process concerns, ordering a party to pay costs, especially when done with fairness and adequate notice is far less controversial. It carries moral authority without threatening the finality or enforceability of the award.[6]

The author briefly but strongly suggests that if tribunals could require a misbehaving party to pay certain costs promptly, mid-proceedings, it could drastically alter the power dynamics in the room. This is done as the party repeatedly delays the proceedings through baseless procedural challenges or floods the case with irrelevant document requests.[7] Rather than waiting until the final award to apportion costs, the tribunal could warn the party early on and issue an interim cost order, directing them to cover the other side's expenses incurred due to those specific disruptive actions. This has to effects firstly, it sends a clear warning that misconduct has immediate repercussions and secondly, it neutralises delay tactics, since the financial burden is no longer postponed to the end.[8]

The 2015 ICC Commission Report explicitly advises tribunals not to wait for a final award before addressing costs. It talks about English litigation practices, where adverse cost decisions frequently stem from individual procedural tussle. Arbitrators educated under such comparative frameworks have become more proactive, increasingly issuing cost orders tied to discrete misbehaviours.[9]

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[4] International Chamber of Commerce, Rules of Arbitration, 2021, art. 38(5).
[5] IBA Guidelines on Party Representation, 2013, guideline 26.
[6] GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION 2601 – 2758 (Kluwer Law International 2021) https://icsid.worldbank.org/sites/default/files/parties_publications/C9734/B%20-%20Request%20for%20Interim%20Measures%20%E2%80%93%2012.14.2021/Claimants'%20Legal%20Authorities/CL-0001-ENG%2C%20Born%20-%20Provisional%20Relief%20in%20International%20Arbitration.pdf.
[7] The School of International Arbitration, Queen Mary University of London, *'2025 International Arbitration Survey The path forward: Realities and opportunities in arbitration',* QMUL https://www.qmul.ac.uk/arbitration/media/arbitration/docs/White-Case-QMUL-2025-International-Arbitration-Survey-report.pdf.
[8] *Supra* note 6.
[9] Neil Newing, Ryan Cable & Johnny Shearman*, Costs in International Arbitration – Are Changes Needed?*, KLUWER ARBITRATION BLOG (Jan. 1, 2019) https://legalblogs.wolterskluwer.com/arbitration-blog/costs-in-international-arbitration-are-changes-needed/.

Moreover, tribunals can use cost sanctions to indirectly discipline legal counsels. Although arbitrators cannot formally sanction party representatives, they can express disapproval of counsel's misconduct through detailed cost orders. If a representative's conduct causes a cost burden for their own client, it may damage the client-counsel relationship or even lead to internal disputes about fee reimbursement. This strategy as the author discussed is a powerful deterrent especially for repeat players in the arbitration world. The psychological and financial impact of such a move can be significant. Knowing that each disruptive step may lead to an immediate and tangible cost, guerrilla parties may think twice before engaging in such conducts.[10] The author rightly highlights that interim cost sanctions, if embraced by tribunals and supported by institutional rules, it can help restore balance where one party wants to weaponise delay. Tribunals must ensure that such orders are proportionate, justified, and do not infringe on due process. Parties must be given a chance to respond before such an order is issued.[11] But if those procedural safeguards are met, interim costs could evolve from a theoretical tool to a real-time check against guerrilla behaviour.

Despite their appeal limitations do exist, the reality is that many parties engaging in guerrilla tactics do so knowing full well they might lose the case and pay costs. But for them, the goal is not to win on the merits. Rather, it is to delay enforcement, exhaust the opposing party's resources, or force a settlement out of frustration.[12] In such scenarios, even a significant cost award at the end of proceedings may not deter misconduct, particularly if the guerrilla party is financially strong. Some parties may consider a cost sanction a valid price for dragging the process out and apply pressure.[13] Additionally, tribunals often show reluctance in penalising parties too harshly, especially in grey areas where it is difficult to draw the line between aggressive advocacy and bad faith, the classification of "excessiveness" in such scenarios becomes difficult. Moreover, lack of consistency across tribunals and institutions in applying conduct-based cost sanctions means that guerrilla actors can't always predict the consequences of their actions and thus, reducing the sanctions' preventive impact.[14] The author indicates that cost sanctions are not a silver bullet, but they are a necessary part

[10] Stephan Wilske, *Sanctions Against Counsel in International Arbitration – Possible, Desirable Or Conceptual Confusion?*, 8, CONTEMP. ASIA ARB. J., 141-184 (2015).
[11] GEORGE A. BERMANN, *Costs Allocation in International Arbitration: What Normative Source, If Any?*, in FINANCES IN INTERNATIONAL ARBITRATION: LIBER AMICORUM PATRICIA SHAUGHNESSY (KLUWER LAW INTERNATIONAL 2020).
[12] Günther J. Horvath & Amanda Neil, *Guerrilla Tactics in International Arbitration*, 19, ASIAN DISP. REV., 131-137 (2017).
[13] Vladimir Khvalei, *Guerilla Tactics in International Arbitration: The Russian View*, AUSTRIAN YEARBOOK ON INTERNATIONAL ARBITRATION 2011, 335 (2011).
[14] Vladimir Plavic, *Disciplinary Powers of the Tribunal*, AUSTRIAN YEARBOOK ON INTERNATIONAL ARBITRATION 2014, 167-179 (2014).

of the solution. When used wisely especially through interim cost awards, they can avoid procedural abuse and help tribunals regain control over disrupted proceedings.

But to make this mechanism more effective, several things need to happen there is a need for the arbitral institutions to give tribunals clearer authority to issue interim cost orders. Tribunals must be trained and encouraged to use these powers confidently and fairly.[15] Additionally, parties should be informed from the outset that procedural misconduct will have financial consequences. Cost sanctions, particularly when applied early and proportionately, can deter guerrilla tactics not by threatening the adversarial process, but by making procedural unnecessary tactics immediately counterproductive.[16] Hence, a strong case for improving cost sanctions especially interim costs, from a theoretical form to an active tool of procedural justice can be observed . While establishing clear frameworks for imposing interim costs it still remains a work in progress.

B. Strategic Use of Interim Measures Against Guerrilla Tactics

The second major weapon proposed is the strategic use of interim measures designed to protect parties' rights and the integrity of the arbitral process itself. These measures, whether termed "provisional" or "conservatory," aim to preserve the status quo, prevent harm, secure assets for eventual awards, or preserve evidence, all "pending final determination of the issues on the merits."[17] The author discusses several manners in which interim measures can counteract guerrilla tactics. For instance, preservation order can prevent the destruction of crucial evidence, which is a common tactic to undermine a case. Similarly, an order for security for costs acts as a deterrent against frivolous claims intended solely to burden the opposing party with legal expenses. By empowering tribunals to issue such orders, arbitration aims to maintain fairness and efficiency.[18]

The author sheds light on the limitations that continue to undermine their practical effectiveness especially in the face of guerrilla tactics. While tribunals may grant urgent relief, their jurisdiction is inherently limited to the parties bound by the arbitration agreement. This becomes problematic when tactics involve third parties, such as moving assets or hiding evidence through unrelated entities,

[15] Mariel Dimsey & Richard Kreindler, *Conduct and Costs: How Should the Tribunal Sanction the Parties in Costs?*, INTL. J. OF ARB., MED. AND DISP. MANAGEMENT, 80, 4, 387-398 (2014).
[16] *Id.*
[17] UNCITRAL Model Law on International Commercial Arbitration, art. 17 (2006).
[18] Jennifer Bryant Dr & Johannes Hagmann, *Interim Measures in International Arbitration: Towards International Consistency*, 10, 2, NLS BUS. L. REV., 46-74 (2024) https://repository.nls.ac.in/nlsblr/vol10/iss2/9.

leaving tribunals powerless to intervene.[19] Jurisdictional disparities further weaken the reliability of interim relief.[20] Adding to this is the delay in constituting the arbitral tribunal itself, the gap between the initiation of proceedings and the formation of the tribunal offers an open window for obstructive tactics to occur unchecked.[21] More importantly, arbitral tribunals simply lack the coercive powers which the national courts have. They cannot fine or imprison parties for non-compliance, leaving enforcement of their orders contingent on often slow-moving domestic courts. The enforceability of interim measures under the New York Convention remains ambiguous, especially for orders not reaching to the level of a final award. This grey area creates inconsistencies and weakens the certainty arbitration offers.[22] Thus, while interim measures are theoretically robust, their effectiveness is hindered by procedural, jurisdictional, and enforcement-related constraints which can be exploited through guerrilla tactics.

IV. INSTITUTIONAL REFORMS: THE 2025 SIAC RULES

It is against this backdrop that the SIAC Rules 2025 represent a significant evolution in this context and addresses the very issues the author identifies. The most noteworthy development is Rule 25 of Schedule 1, which introduces a major procedural shift, allowing a party to seek emergency interim relief even before filing a Notice of Arbitration, and potentially without notifying the opposing party. These Protective Preliminary Orders ["**PPOs**"] are granted ex-parte by an Emergency Arbitrator, who is required to act within 24 hours of appointment.[23] This is a direct response to a recurring problem which is that the time lag between the initiation of arbitration and the formation of the tribunal. Guerrilla tactics are prevalent in this time gap where one party can destroy evidence, move assets offshore, or take unilateral steps to damage the process.[24] The main benefit of this is the speed in which the Emergency Arbitrator is empowered to act with exceptional urgency. There is secrecy involved in which the ex-parte mechanism allows applicants to seek relief before the opposing party can react destructively. While a system of checks and balances is maintained as the PPOs must be served within 12 hours of issuance, and they expire within 3 days unless properly notified hence,

[19] LAWRENCE W NEWMAN & COLIN ONG, INTERIM MEASURES IN INTERNATIONAL ARBITRATION INTRODUCTION, (JurisNet, LLC 2014).
[20] GUO YU, THE UNCITRAL MODEL LAW AND ASIAN ARBITRATION LAWS: IMPLEMENTATION AND COMPARISONS, 285 (Cambridge University Press 2018).
[21] PATRICIA SHAUGHNESSY, INTERIM MEASURES, INTERNATIONAL ARBITRATION IN SWEDEN: A PRACTITIONER'S GUIDE, 95 (Kluwer Law International 2013).
[22] B.A. Bukar, *Enforcement of Interim Measures / Awards in Domestic and International Commercial Arbitration Under the New York Convention and the Arbitration and Conciliation Act*, TDM 1 (2010) www.transnational-dispute-management.com.
[23] Singapore International Arbitration Centre (SIAC) Rules, 2025, Rule 25, Schedule 1.
[24] *Supra* note 21.

safeguarding due process.[25] By balancing speed with procedural fairness, SIAC's approach sets a new benchmark for functional and enforceable interim relief in arbitration.

To deal with third parties who are not signatories to the arbitration agreement but are often used to carry out guerrilla tactics like hiding assets or obstructing evidence.[26] Under the new rules, particularly the broadened joinder provisions, SIAC allows third parties to be joined to the arbitration even before the tribunal is formally constituted.[27] Previously, such procedural delays gave the guilty party a window to exploit these outsiders without any consequence. Now, if a party is suspected of using a third party to interfere with the process, there's a quicker route to bring that third party into the proceedings and hold them accountable.[28] While arbitrators still can't force third parties to comply the way courts can, these reforms strengthen the tribunal's ability to act swiftly and strategically.

While not interim measures per se, the expanded Expedited Procedure and the newly introduced Streamlined Procedure (for disputes under SGD 1 million) have a critical as well as a supportive role. By reducing timelines and procedural complexity, these rules minimise the window during which interim relief may be urgently needed. this matters because the longer the proceedings, the greater the incentive and opportunity for guerrilla tactics to flourish. SIAC's structural changes reduces the need for interim measures by simply ensuring that final resolution comes quickly. In a sense, it acts as a preventative mechanism, discouraging the types of delay-based misconduct that interim measures are often called upon when needed.[29]

By comparing the author's proposals with the features of the SIAC Rules 2025, it becomes clear that his recommendations are both valid and practically realisable. His advocacy for empowering tribunals to act early and decisively against misconduct comes through in SIAC's proactive granting of powers to Emergency Arbitrators and the institution's willingness to intervene pre-tribunal. His call for measures to address third-party manipulation is reflected in expanded joinder rules. And his emphasis on disciplined, time-conscious procedures aligns with the structural changes designed to streamline lower-value disputes and reduce incentives for delay.

V. CONCLUSION

[25] SIAC Rules 2025, Schedule 1, at ¶29.
[26] *Supra* note 19.
[27] SIAC Rules 2025, Rule 38.
[28] Jonathan Lim & Zeslene Mao, *Revised SIAC Rules Come Into Effect On 1 January 2025*, WILMERHALE, (Jan. 8, 2025) https://www.wilmerhale.com/en/insights/client-alerts/20250108-siac-rules-come-into-effect-on-1-january-2025.
[29] *Id.*

Overall, what stands out are the arguments by the author which are firmly grounded in the contemporary realities of arbitration practice, and his proposed solutions are neither utopian nor purely doctrinal, they are rooted in mechanisms already visible in the rules and practices of leading arbitral institutions. This book is directly helpful to practitioners, arbitrators, institutional policymakers, and even legislators tasked with supporting the arbitral framework.

The book's strengths lie in its comprehensive scope, the clarity with which it categorises guerrilla tactics, and the practicality of its suggested counter-measures. Its integration of cost sanctions into procedural discipline, combined with a realistic appraisal of their limits, demonstrates sophisticated thinking. The exploration of interim measures is quite balanced, crediting their potential while being candid about enforcement shortcomings. By connecting these critiques onto real institutional reforms like those of SIAC, the author's analysis feels both validated and forward-looking.
However, certain limitations inherent in the topic that the book cannot fully overcome. As the author himself concedes, some guerrilla actors are undeterrable by present-day measures, cost sanctions may be escaped by wealthy parties, and interim measures may fail in jurisdictions with limited enforcement cooperation. While the proposals are solid, their global efficacy remains contingent on unifying of standards across institutions and jurisdictions, which is something beyond the control of any one tribunal or set of rules. Moreover, the complex line between aggressive advocacy and abusive conduct remains a challenge for arbitrators, potentially causing hesitation in deploying sanctions even if warranted.

In conclusion, the book is a relevant, rigorous and practical contribution to the studies on arbitration reform. It captures the dual reality of arbitration's promise and its procedural deficiencies, and it proposes tools when deployed effectively, can shift the balance of power away from guerilla actors. While it is realistic about the limitations of these tools, the book is optimistic about their potential being actualised by institutional will and practical rule changes, as seen in the SIAC 2025 reforms. Navin G. Ahuja's work functions as both a warning and a guide that without vigilance, flexibility can be weaponised, but with carefully crafted measures, arbitration can remain resilient, disciplined, and fair in the face of evolving procedural threats.