

Change, Add, or Withdrawal of Representative as Guerrilla Tactics in International Arbitration

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Abstract

International arbitration has seen significant growth in recent years, but it continues to face inefficiency dilemma. While guerrilla tactics in arbitration have been widely criticized, the issue of whether the change, add, or withdrawal of representatives constitutes a form of guerrilla tactics receives little attention. The article observes that change, add, or withdrawal in representation result in procedural delays and conflicts of interest, undermining the integrity of the arbitration process. While the change of representative based on force majeure is generally justified, relationship breakdowns or divarication remain more controversial. The existing international arbitration framework includes ethical guidelines and rules governing the conduct of representatives, but these provisions lack clear and consistent regulation, leaving room for strategic manipulation of representation change. The article argues that tribunals must balance the parties' right with efficiency. There is a pressing need to further refine and strengthen ethical standards and procedural rules.

1. Introduction

Advocates have long favored arbitration over court litigation for its efficiency and confidentiality, particularly in the business sector where parties seek expedient, convenient dispute resolution.³ However, recent critiques point to increasing time and cost inefficiencies in international arbitration. It has been pointed out that the worst situation facing international arbitration is the high costs and lack of efficiency.⁴ Official statistics reveal a concerning trend: average arbitration duration increased from 25 months in 2011 to 39 months in 2015 in ICSID arbitration.⁵ In the

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³ Tony Cole and Pietro Ortolani, *Understanding International Arbitration*, Routledge 2020, p.2.

⁴ Queen Mary University of London, 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration, p.24, <https://www.qmul.ac.uk/arbitration/research/2015/index.html>. accessed 24 December 2024.

⁵ ICSID Annual Report 2011 and ICSID Annual Report 2015, <https://icsid.worldbank.org/resources/publications/icsid-annual-report> accessed 24 March 2024.

same year, the London Court of International Arbitration (LCIA) reported an average duration of 16 months.⁶ These underscore a growing duration dilemma in international arbitration.

One significant factor contributing to the dilemma is the disruptive or unethical conduct of counsel,⁷ often termed "Guerrilla Tactic". The efficiency of arbitration heavily relies on procedural adherence and counsel performance. Disruptive behaviors by counsel, such as delaying document submission or hindering witness testimony, undermine the proceeding's expediency. These are often referred to as "guerrilla tactics", where a party exploits procedural rules to gain an advantage, delay proceedings, and, if possible, disrupt or annul the arbitration.

Guerrilla tactics can be in many forms, many scholars have studied it. However, the ethical implications of changing, adding, or resigning counsel—potentially another form of guerrilla tactics—received insufficient attention. It is not hard to understand that change or addition of a representative can sometimes be deemed as guerrilla tactics, because it may lead to conflicts of interest. On first glimpse, it is unlikely that withdrawal constitutes guerrilla tactics. However, it becomes more complex in reality. Withdrawal of counsel normally involves finding another new counsel and hand-over, which means that the party may require additional time to prepare for the arbitration, resulting in procedural delay.

This article explores whether and to what extent the change, addition, or resignation of counsel can constitute guerrilla tactics in international arbitration. Part Two examines the negative impacts of counsel changes, highlighting their increasingly blurred line with guerrilla tactics. Part Three analyzes specific scenarios involving counsel changes through case studies and precedents to assess their potential misuse. Part Four discusses the ethical and legal frameworks governing representation in arbitration, including the duties and discretion of arbitral tribunals in addressing such tactics. The article concludes by synthesizing these elements and offering practical recommendations, aiming to balance procedural fairness with the integrity and efficiency of the arbitration process.

2. Is Change, Add, or Withdrawal of Representative Guerrilla Tactics?

2.1 Negative Impacts of Change, Add, or Withdrawal of Representative

2.1.1 Procedural Delay

The most apparent adverse consequence of the change of counsel is the delay in proceedings. Withdrawal of counsel normally involves finding new counsel and hand-over, which means that the party may require additional time to prepare for the arbitration, resulting in procedural delay. This issue was notably illustrated in *Europe Cement v. Turkey*, where the claimant's counsel sought to resign after over a year of ICSID proceedings due to irreconcilable differences with the client. Europe Cement requested a 90-day suspension to appoint new counsel, but the tribunal allowed only 45 days. Over the following year, the claimant repeatedly sought deadline extensions, ultimately requesting a total of 253 days, of which only 190 were granted. These developments significantly disrupted the arbitration timeline, underscoring how changes in counsel can seriously affect procedural efficiency.⁸

⁶ LCIA, Costs and Duration: 2013-2016, <https://www.lcia.org/News/lcia-releases-updated-costs-and-duration-analysis.aspx> accessed 24 March 2024.

⁷ Preet Singh Oberoi, *Understanding "Guerrilla Tactics" in International Arbitration*, Christ University Law Journal (2014) 3(2) 69.

⁸ *Europe Cement Investment and Trade S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, paras. 37-76.

2.1.2 Conflict of Interest

In some cases, changing or adding a representative may be exploited by a party (or their counsel) to create a conflict of interest, thereby affecting the fairness and finality of the judgment. In the case of *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, the respondent's decision to appoint a barrister from the same chambers as one of the arbitrators precipitated a conflict-of-interest concern. The lack of comprehensive disclosure by the respondent regarding the extent of the proposed counsel's involvement became a focal point of contention. The arbitral tribunal, prioritizing the integrity of the arbitration process, made a pivotal decision to prohibit the participation of the barrister.⁹ This case underscores the inherent tensions and ethical considerations in the arbitral process, particularly concerning the selection and modification of legal counsel.

2.2 The Blurry Frontier: Guerrilla Tactics and Change, Add, or Withdrawal of Representative

The term "Guerrilla", originating from Spanish meaning "little war" and traditionally associated with guerrilla warfare, takes on a specific connotation in the context of international arbitration. It refers to the unethical behaviors of parties. It describes those players whose goal is "to exploit the procedural rules for their own advantage, seeking to delay the hearing and (if they get any opportunity) ultimately to derail the arbitration so that it becomes abortive or ineffective".¹⁰

Guerrilla tactics might manifest as jurisdictional challenges by a party, repetitive requests for information or evidence, and other strategies causing procedural delays. In general, the identification of guerrilla tactics relies heavily on the criteria of deliberate abuse and malicious intent,¹¹ all within the framework of good faith. Good faith principle is not only a mandatory obligation under public international law,¹² but also the kernel of *lex mercatoria* and the core of international investment arbitration.¹³ In the absence of specific guidance, good faith may be invoked as a supplementary principle to fill gaps in the law or to provide a basis for decisions where the applicable law is silent or ambiguous.

The ethical implications of changing, adding, or resigning counsel—potentially another form of guerrilla tactics—received insufficient attention. This is not surprising. The right to change counsel is typically vested in the parties involved in litigation or arbitration. Under normal circumstances, such changes are seldom associated with guerrilla tactics. However, it is imperative to recognize that international arbitration has evolved into a sophisticated industry with specialized roles and functions. The act of parties changing counsel is not always indicative of a need for new representation but can sometimes serve as a means to delay the arbitration process and create conflicts of interest, thereby impacting the progression of arbitration or the enforceability of arbitral awards. This strategic manipulation of counsel changes within the arbitration framework warrants closer examination, as it raises significant ethical concerns and challenges the integrity of the arbitration process. Evaluation of

⁹ *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, ICSID Case No. ARB/05/24, Order Concerning the Participation of Counsel.

¹⁰ Micheal Hwang SC, 'Why is There Still Resistance to Arbitration in Asia?' (International Council for Commercial Arbitration, Revised Version 22 October 2006) https://cdn.arbitration-icca.org/s3fs-public/document/media_document/media012232972346990why_is_there_still_resistance_to_arbitration_in_asia.pdf accessed 24 March 2024.

¹¹ Günter J Horvath, Stephan Wilske, Harry Nettlau and Niamh Leinwather, 'Categories of "Guerrilla Tactics" in "Guerrilla Tactics" in International Arbitration' in Chapter 1, Section 1.02.

¹² United Nations Charter, Chapter I, Article 2.2: All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter. <https://www.un.org/en/about-us/un-charter/chapter-1>.

¹³ Bernardo M. Cremades, *Good Faith in International Arbitration*, *American University International Law Review*, 2012 (4), p. 761-788.

circumstances of changing counsel may shed light on how and under what situation such change may constitute abuse of process.

3. Circumstances for Change, Add, or Withdrawal of Representative

3.1 Justified Circumstance: Force Majeure

Force majeure describes the presence of an unforeseeable, uncontrollable, external, and irresistible event. This term describes unforeseeable and irresistible events that might necessitate such changes, encompassing scenarios like natural disasters, epidemics, and severe illness. In international arbitration, force majeure is often a compelling reason for changes in legal representation, including the withdrawal of counsel. An example illustrating force majeure is the case of *Crescent v. NIOC*, where the counsel of the Respondent had to resign because of the serious illness.¹⁴ The tribunal did not put a veto upon the counsel's resignation, considering it was 10 days before the hearing, but cancelled the hearing.

The determination of force majeure claims is crucial in distinguishing between legitimate reasons for change of counsel and guerrilla tactics. In determining the legitimacy of force majeure claims, the key lies in establishing the unforeseeability and irresistibility. An event is unforeseeable if it could not be predicted with reasonable foresight, and irresistible if it renders the counsel's performance impossible.¹⁵ Situations like being trapped in a wartime blockade represent true force majeure, justifying changes in representation. However, not all scenarios qualify as force majeure. The introduction of the proportionality principle is essential when assessing whether a change of counsel constitutes force majeure, particularly in cases where the boundary is unclear. For instance, insisting on counsel resignation for minor disagreements within a law firm could indicate guerrilla tactics. In such cases, the proportionality principle ensures that the actions taken by the parties are commensurate with the actual severity of the problem. It prevents the arbitration process from being improperly interrupted due to trivial issues and guards against the misuse of such claims as guerrilla tactics. Therefore, while force majeure can justify changes in legal representation, its claims require rigorous scrutiny to prevent misuse in the guise of guerrilla tactics.

3.2 Possible Yet Skeptical Circumstances

3.2.1 Relationship Breakdown

The dynamics of representation in arbitration are inherently complex. Changes in counsel—whether through substitution, addition, or withdrawal—often arise from a breakdown in the relationship between the client and their legal representative. A strong and cooperative counsel–client relationship is essential, as it enables strategic collaboration aimed at achieving favorable outcomes in a cost-effective manner.¹⁶ This synergy significantly influences both the trajectory and effectiveness of the arbitration process.

However, such relationships are not always stable, and subjective tensions may lead to irreparable discord. A notable illustration is the domestic case of *Bartlit Beck LLP v. Okada*, in which the respondent's counsel sought to withdraw due to an irreconcilable breakdown in their relationship with the client, rendering continued representation unworkable. The claimant argued that the withdrawal constituted a tactical attempt to delay the

¹⁴ *HCrescent Petroleum Company International Limited, Crescent Gas Corporation Limited v National Iranian Oil Company*, PCA Case No. 2019-03, Letter From Respondent's Counsel Peter&Kim to the Tribunal on Their Resignation, para. 6.

¹⁵ *Metal Recycle (FNF) Inc. v. Transnat Express Inc.*, [2005] J.Q. no 17323 (QCSC) Quicklaw, Quebec Supreme Court, 2005.

¹⁶ Luther C. McKinney, *Relationship with Outside Counsel*, *Business Lawyer* (ABA), 1979 (3), p. 921.

proceedings, and the judge likewise expressed concern over the unusual nature of the request. Ultimately, the withdrawal was permitted—but only after the arbitrators received a full explanation, as they had expressly required.¹⁷

This case underscores the reality that, in certain circumstances, withdrawal or substitution of counsel is not only justified but necessary to protect the integrity of representation. Recognizing this necessity is vital to ensuring that parties' interests continue to be effectively and ethically advanced within the arbitral process.

The challenge arises in determining the precise circumstances under which a breakdown in the relationship justifiably leads to the withdrawal of counsel. This is not a one-size-fits-all determination but rather one that requires a nuanced, case-by-case analysis by the arbitral tribunal. The tribunal must consider various factors, including the reasons for the breakdown, the potential impact on the arbitration proceedings, and the fairness to all parties involved.

3.2.2 Divarication Between the Client and Representative

A less common but important scenario arises when a client chooses to change or add counsel, or when counsel consider withdrawing from a case—situations often described as divarication. In simple terms, divarication refers to a breakdown in the client-counsel relationship, where agreement cannot be reached. The case of *Europe Cement v. Turkey* illustrates this complexity. After repeated requests from the claimant, the tribunal granted multiple extensions, but offered limited justification for doing so.¹⁸

Divarication can also refer to deeper conflicts between a counsel's broader objectives and the individual client's immediate interests. This tension is evident in *Tahsin Acar v. Turkey* before the European Court of Human Rights (ECtHR). Acar, a Kurdish rights activist, was convicted under Turkey's anti-terrorism laws for his alleged involvement with the "Kurdistan People's Uprising." The ECtHR ultimately found that Turkey had violated his rights under Articles 5 and 6 of the European Convention on Human Rights.¹⁹ Interestingly, it has been suggested that Acar rejected a generous settlement offer during negotiations—either of his own volition, or possibly at the insistence of his lawyer.²⁰ This raises concerns about potential misalignment between the client's practical interests and the counsel's broader advocacy goals. While lawyers may prioritize long-term legal or human rights strategies, clients often focus on resolving their own cases, leading to possible conflicts in direction and decision-making.

While this case did not concern change, add, or withdrawal of representatives, it did pose a complex question: when the client's goal is not aligned with the counsel's pursuit, whether representation should be continued, and what if the other party opposes withdrawal? Specifically, it examined the scenario where the objectives of the client and the counsel are not in agreement, and whether representation should be continued despite opposition from the other party to the withdrawal. This case is particularly relevant to international investment arbitration, which often intersects with human rights issues. When a claimant or respondent faces criticism for human rights violations, the counsel's role in continuing representation becomes a complex ethical dilemma. The *A.S. Mohammed Rafi* case provides valuable insights into this issue.

¹⁷ *Bartlit Beck LLP v Okada*, Case No. 1:19-cv-08508 (U.S. District Court for the Northern District of Illinois).

¹⁸ *Europe Cement Investment and Trade S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, paras. 37-76.

¹⁹ App. No. 26307/95, *Tahsin Acar v. Turkey*, Judgment of 8 Apr. 2004.

²⁰ Arman Sarvarian, *Common Ethical Standards for Counsel before the European Court of Justice and European Court of Human Rights*, *European Journal of International Law*, 2012, p. 991.

In *A.S. Mohammed Rafi*, the Coimbatore Bar Association's resolution not to defend accused policemen in a criminal case was a significant development. This decision was scrutinized under the lens of a lawyer's duty to defend and the constitutional right of every individual to legal representation. The Supreme Court of India's judgment in this matter underscored the paramount importance of professional ethics within the legal profession. The court emphasized that lawyers have a duty to accept briefs in any case, regardless of the nature of the case or their personal sentiments, highlighting the foundational principles of legal representation and justice.

The Supreme Court's stance in *A.S. Mohammed Rafi v. State of Tamilnadu* is a clear affirmation of the lawyer's role as an officer of the court, bound by a professional obligation to ensure that justice is served, even when it may conflict with personal beliefs or public opinion. This principle is crucial in the context of international arbitration, where counsel may face similar ethical challenges. Lawyers must navigate the tension between their professional duties and the potential moral implications of representing clients accused of human rights abuses.

4. Implications of Ethical Regulatory Frameworks on Change, Add, or Withdrawal of Representative in International Arbitration

While there are neither procedural rules nor precedents prescribing the circumstances in which an advocate may (or must) accept a representation agreement or withdraw from one, some ethical rules on representation and code of conduct implied such trend. In the context of international arbitration, the rules governing party representation are designed to ensure procedural integrity and fairness.

4.1 Notification Obligation

There is a universal obligation for notification. For example, Article 4 of the 2013 IBA Guidelines on Party Representation in International Arbitration emphasizes the importance of promptly notifying changes in representation to both the arbitral tribunal and the opposing party. Additionally, both the Shanghai International Arbitration Center (SIAC) Rules and the Hong Kong International Arbitration Center (HKIAC) Rules state that changes and additions to representation should be communicated with the parties, the arbitral tribunal, and the registrar. This requirement, common to almost all arbitration rules, is designed to ensure transparency and allow for the identification of any potential conflicts of interest with new representatives.

4.2 Avoiding Conflict of Interest

The purpose of the notification requirement is to avoid conflicts of interest. Article 17 of the International Chamber of Commerce (ICC) Arbitration Rules necessitates prompt notification of any changes in party representation, emphasizing the need to avoid conflicts of interest. Article 5 of the 2013 IBA Guidelines on Party Representation in International Arbitration outlines the need to avoid conflicts of interest between a party's representative and the arbitral tribunal. This clause is crucial for preserving the impartiality and credibility of the arbitration process.

4.3 Consent Requirement

Some rules explicitly grant the tribunal the right to refuse changes in representation. Generally speaking, changes in representatives are completed through negotiation between the parties, and the tribunal should not exercise power in this matter without good cause. However, when parties cannot reach a consensus, causing delays in the case, the tribunal's intervention becomes a must-do job. These rules include Article 6 of 2013 IBA Guidelines on Party Representation in International Arbitration, Article 18.3 of 2014 Arbitration Rules of the London Court of International Arbitration (LCIA), Article 17 of the International Chamber of Commerce (ICC) Arbitration Rules.

Entering into how the Tribunal should determine whether to grant leave or change of counsel, only LCIA Rules provides clear guidance. Article 18.4 grants the tribunal the authority to withhold approval for changes in representation if they could compromise the tribunal's composition or the award's finality. Furthermore, the rules clearly state that in deciding whether to grant or revoke consent: party's right to choose its representative, the arbitration's stage, and considerations of cost-efficiency and time management.

Consent of the arbitral tribunal is not always necessary. For example, neither the SIAC Rules nor the HKIAC Rules requires the arbitral tribunal's consent for changes in representation, nor do they explicitly grant the tribunal the power to exclude such changes.

Requiring arbitral tribunals to consent to changes in legal representation presents both benefits and drawbacks. On the one hand, it promotes procedural integrity by empowering tribunals to oversee the conduct of proceedings and clarifies the scope of their authority. The case of *Rompotrol v. Romania* is illustrative: the tribunal was asked to consider the resignation of counsel due to alleged conflicts of interest. Although it ultimately refrained from intervening, the tribunal's handling of the issue reflects the delicate balance between safeguarding the arbitration's integrity and respecting party autonomy. Clear rules on tribunal authority in such matters are therefore essential.

On the other hand, mandating tribunal consent may undermine party autonomy—a foundational principle of arbitration. Restrictions on the freedom to choose legal representatives could discourage parties from selecting arbitration as their preferred dispute resolution mechanism or from engaging with certain institutions. Thus, while tribunal oversight is vital, it must be carefully balanced against the parties' right to determine their own representation.

4.4 Right to Withdrawal

In the realm of international arbitration, the issue of a counsel's right to withdraw from proceedings is not as extensively addressed as other aspects of representation. The American Bar Association's (ABA) Model Rule is distinctive in its specific provision for the withdrawal of representatives. Unlike other rules that typically focus on changing or adding representatives, the ABA Model Rule acknowledges the possibility of complete withdrawal. This relative lack of attention to withdrawal rights in arbitration rules could be due to a couple of factors. First, the relationship between a representative and a client is primarily governed by private law. Incorporating regulations about this relationship into arbitration rules might lead to jurisdictional overlaps and conflicts, as arbitration rules are meant to govern the conduct of proceedings rather than the private relationships between parties and their representatives.

Second, withdrawal of a representative is generally not perceived as creating conflicts of interest, and hence, may not be considered necessary to regulate within arbitration rules. Arbitration rules often focus on preventing conflicts of interest, a scenario less likely to arise from the withdrawal of a representative. However, the simplicity of this view is challenged by the reality of guerrilla tactics. These tactics aim to delay proceedings, and any actions that contribute to such delays, including the time taken to find a new representative or to hand over case-related work, can be exploited as guerrilla tactics. Therefore, while withdrawal itself might not create a conflict of interest, its potential use as a tactic to delay proceedings warrants consideration in the broader context of maintaining the integrity and efficiency of arbitration processes.

5. Responding to Change, Add, and Withdrawal of Representative in International Arbitration

5.1 The Tribunal's Role

If it is a domestic arbitration, then the methods to counter guerrilla tactics involve three approaches: the courts, the arbitral tribunal, and regulatory authorities.²¹ But it is highly questionable whether a state court would feel competent (and comfortable) to decide applicable issues of counsel conduct that arose in an international arbitration.²² In other words, the tribunal plays a pivotal role in the international arbitration process, particularly in countering the employment of guerrilla tactics. They are the first line of defense against strategic maneuvers that aim to disrupt the arbitration's integrity and timeliness. A critical issue that arises is how tribunals should navigate situations where there are questionable changes, additions, or withdrawals of legal representation.

A central concern for arbitral tribunals is the management of procedural timelines in the context of changes in legal representation. Tribunals are generally discouraged from outright rejecting such changes; instead, they are encouraged to evaluate any related requests for extensions. Often, when counsel changes are suspected to be guerrilla tactics, they are accompanied by applications to delay proceedings or extend submission deadlines. In such cases, tribunals may choose to focus not on the change itself, but on the legitimacy of the extension request. This approach offers several advantages: first, the decision to grant additional time falls within the tribunal's discretion, as reflected in the ICSID Arbitration Rules, which permit extensions only with party consent or under special circumstances. Second, it avoids the complex and often contentious task of determining whether guerrilla tactics are in play. Third, focusing on extension requests alone is often sufficient to preserve the efficiency and integrity of the proceedings.

Nonetheless, where identification of guerrilla tactics is necessary, tribunals must apply relevant procedural rules and interpretative methods to reach a clear determination. In situations where a party seeks an extension due to counsel substitution or resignation—particularly when opposed by the other party—the tribunal must carefully assess the justification for such changes. A thorough evaluation helps determine whether an extension is warranted and ensures that the arbitration process remains both fair and timely.

Ultimately, tribunals must balance the parties' right to adequate representation with the need to maintain procedural discipline. Their decisions should be guided by principles of fairness, efficiency, and justice. Through careful and principled decision-making, tribunals play a vital role in preserving the credibility and effectiveness of international arbitration.

5.2 Improved Ethical Regulatory Frameworks for Change, Add, or Withdrawal of Representative

The lack of uniform ethical standards and a weak regulatory framework in international arbitration are among the root causes of guerrilla tactics.²³ In the context of guerrilla tactics, the role of rules is crucial. The refinement of the legal framework can be approached from multiple angles.

²¹ See Vijayendra Pratap Singh, Abhijnan Jha, et al., *'The More Things Change, the More They Stay The Same: Guerrilla Tactics in Arbitration in India'*, Asian Dispute Review, 2022, pp. 62-65.

²² Wilske, Stephan. *'Sanctions against Counsel in International Arbitration - Possible, Desirable or Conceptual Confusion.'* Contemporary Asia Arbitration Journal, 2015, p. 150.

²³ See Ashish Sharma, *'Guerrilla Tactics in Arbitration vis-a-vis International Arbitration'*, International Journal of Law) Management & Humanities, 2021, pp. 673-675.

Firstly, the notification obligation of parties involved in changing, adding, or withdrawing representatives is of paramount importance. While most arbitration rules explicitly stipulate the timeliness of notification, they often lack specifications regarding the content of such notifications. Therefore, it is necessary to standardize the content of these notifications at the level of arbitration rules, facilitating the tribunal's judgment on the existence of guerrilla tactics. Additionally, under the principle of honesty and integrity, arbitration rules should also mandate the authenticity of such notifications. The notification obligation is indispensable for tribunals to identify conflicts of interest and to ascertain the use of guerrilla tactics, making these obligations crucial.

Secondly, it is important to explicitly state that changes, additions, or withdrawals of representatives require the consent of the arbitral tribunal or to clearly empower the tribunal with the authority to refuse such changes. At the same time, it should be stipulated that the tribunal should approve these changes if there is no opposition from the other party and no conflict of interest exists. This ensures the tribunal's ability to maintain procedural integrity while avoiding undue interference with the parties' autonomy. As demonstrated in the case of *Rompetrol v. Romania*, if arbitration rules do not clearly specify this power of the tribunal, considerable time may be required to prove that this is an inherent authority of the tribunal. Conversely, if the rules clearly define this power, the tribunal can focus on more critical issues.

Thirdly, attention should be paid to when and under what circumstances representatives can withdraw from the arbitration process. Traditionally, the withdrawal of representatives was considered beyond the jurisdiction of the arbitral tribunal. However, considering the impact of representative actions on the efficiency of arbitration proceedings, this notion seems outdated. The ABA Model Rules have made significant progress in addressing the resignation of representatives and provide a solid foundation in this regard. The relevant rules first recognize that the resignation of representatives could be an issue that delays proceedings and enumerate possible scenarios for such resignations.

In summary, these aspects highlight the need for a comprehensive and nuanced approach to managing representation changes in arbitration, ensuring the proceedings' integrity while respecting the autonomy and rights of the parties involved.

6. Conclusion

The academic and practical exploration of guerrilla tactics in international arbitration is well-trodden ground, yet the question of whether the change of counsel can be considered a new form of such tactics has rarely been addressed. Through case study research, this article has found that while the change of counsel is not traditionally seen as guerrilla tactics, recent cases suggest a shift. The conflicts of interest and procedural delays caused by change of counsel meet the essence of guerrilla tactics in some instances, thereby blurring the line between the right to change counsel and guerrilla tactics. This study has revealed that force majeure, relationship breakdown, and divarication are reasons parties give for changing counsel, yet international arbitration rules do not impose strict limitations on these actions, leaving the appointment and change of counsel largely within the realm of self-regulation. As international arbitration evolves into a sophisticated industry, the practice of employing the right to change counsel as a *de facto* guerrilla tactic warrants the attention of arbitration practitioners. Both arbitral tribunals and ethical guidelines must respond to this phenomenon.