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THE PRAGUE RULES ON THE EFFICIENT CONDUCT OF PROCEEDINGS IN INTERNATIONAL ARBITRATION

Duarte G. HENRIQUES[1]

International arbitration is undoubtedly too expensive, complex and time-consuming. Accordingly, one thought that currently crosses one's mind is the questioning of alternatives and the unavoidable drawing parallels: indeed, international arbitration is too expensive, complex and time-consuming, but compared to *what*? The terms of this equation are almost self-evident: compared to domestic arbitration and to litigation before state courts. However, it seems to me that the terms of this query might lead to an inaccurate conclusion and one should instead question: compared to *when*?

So, let´s rewind to a couple of decades ago, say 1990. How was international arbitration in those days? We all know, or at least have a vague notion, that arbitration was an expedited means of solving a dispute by independent, honourable, knowledgeable and reputed adjudicators, who rendered a service in a quality and cost-time efficient manner. At the time, arbitrators did not need to check much other than the contract, the applicable law and the "lex arbitri". Their added value would arise of their managing and intercommunication skills and their time dedicated both to the examining of evidence, which had been reputed as pertinent and relevant to decide the dispute, and to the drafting of the award.

Presently, not only must we look at those sets of materials but also to a thick bundle of rules, guidelines, notes and instructions that, hyperbolically speaking, would much more resemble a "Code of Civil Procedure for International Arbitration" than a set of documents to guide the conduct of arbitration proceedings. We have reached the point where there is even a set of rules on how to conduct the conferencing with witnesses.

There is a recollection of war stories of all sorts from those days. Further, the undeniable cultural divides in the international practice call for the use of predictable and generally accepted standards, which rules such as the *IBA Rules on the Taking of Evidence* somehow represent. But the question here is whether this standardization is a panacea to the challenges of international

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arbitration, being a key factor to reduce the conflicts, or rather a new source of litigiousness, a catalyst to more and unprecedented conflicts? Further, is standardization a means to a better way of solving disputes or is it a means in itself?

At the same time, international arbitration has also been subject to conflicting driving forces regarding its primary role: while in some regions of the globe, arbitration is a "quasi-judicial" means to do justice and seek for the whole truth, in others it is just but a mechanism to solve a dispute and bring some peace to commercial relationships, which yields the fostering of international commerce and keeps the pace of ongoing business transactions.

In my view, *The Prague Rules* have emerged as a flag to stand on the very edge of all these conflicting driving forces: standardization (which some understand, wrongly in my opinion, as predictability) versus flexibility, and "truth seeker" versus "dispute resolver". In so doing, *The Prague Rules* also serve the purpose of showing to the world of arbitration that parties may count on having different perspectives, approaches and ways of conducting international arbitration proceedings. Legal cultures and concepts apart, it is true that *The Prague Rules* aim to allow arbitral tribunals to exercise their powers in a more interventive and pro-active way, and to be less fearing of the "due process paranoia". Irrespective of the value of the claims at stake, their purpose is to reduce the costs and time associated to international arbitration, and their assumption is that more interventive and pro-active powers of arbitral tribunals yield such outcome. The truth is that *The Prague Rules* find their foundations in inclusiveness, diversity and in the truly international character of international arbitration.

That said, they do not purport to be the best way to conduct arbitral proceedings, but merely another way of doing so. *The Prague Rules* do not aim to be an unbreakable cluster that must be accepted or rejected in its entirety, but rather a tool to provide parties with different options that they can "cherry pick" and combine with other sets of rules.

As I see it, *The Prague Rules* are not a step backward but an alternate route, granting viable options to those who wish for customized proceedings, best suited to their needs, interests and expectations in international arbitration.

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