

How Will the Coronavirus Impact International Arbitration?

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Gary L. Benton (Gary Benton Arbitration)

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Background - The Pandemic is Confirmed

As cases of COVID-19, the pathogen associated with the coronavirus outbreak, are reported in rising numbers in countries around the world, the likelihood of a worsening global impact looms. This past Wednesday, the World Health Organization officially declared the outbreak a global pandemic.

In the course of just a couple weeks, the virus has evolved from a challenge largely affecting Central China to a crisis that has the world's full attention. In the past three weeks, the number of affected countries has jumped from approximately 25 to 114, with the number of confirmed cases rising sharply. COVID-19 has infected over 125,000 people, resulting in thousands of deaths, and many more cases and deaths may be unreported.

The virus has already destabilized global commerce, hit company earnings worldwide and prompted significant drops in global stock markets. Cities, regions and, now, countries are being locked down. Daily work and travel plans are being altered for nearly all of us.

The virus has spread substantially in and beyond China, and there are significant outbreaks most notably in Italy, Iran, and South Korea, with a growing number of reported outbreaks in many other countries in Europe, Asia and the US.

The issue now is time. Health officials say there are no proven therapies for the virus and most say it will take at least a year to develop a safe vaccine. Accordingly, we can expect the virus to be with us for an extended period.

It is easy to panic, but is doing so warranted? To date, most cases are mild, medical resources are largely available for more severe cases and outbreaks are being contained. There is good cause for hope that public health strategies will be successful. At this point, the goal is to slow the spread of the virus so that healthcare systems can be properly prepared and not overwhelmed.

Impact to Date

Anticipating how the virus will impact international arbitration is a difficult and somewhat dystopian task. The future is uncertain. Still there is no question that the virus has already impacted the field and will have greater impacts if it is not readily contained.

It is certain that the virus is already affecting the way business is done. International supply chains have been severely affected. Many law firms are advising their clients regarding suspending contractual performance and force majeure provisions. Contract drafters are rethinking contractual terms including provisions as to arbitral seats, choice of law, institutions and procedures.

The virus has caused disruption to international arbitration practice in China, South Korea, Japan, Singapore, elsewhere in Asia and, now, increasingly in Europe, the US and the rest of the world. Apart from quarantines, travel to and from parts of Asia and Italy has been banned or curtailed by governments. This past Wednesday, the US imposed major restrictions on travel from continental Europe.

The virus is increasingly affecting international arbitration in regions that had limited exposure to the contagion before. In a period of two weeks, a small outbreak in Italy has escalated to a growing concern throughout Europe. In the past months, tribunals in the US and Canada have been struggling to manage hearings without witnesses from China. Now the US is dealing with its own outbreaks, particularly in Washington State, California, and New York.

Arbitration hearings have been delayed or relocated and most practitioners are

giving thought to whether it is safe to conduct hearings in certain locales. A growing number of companies and law firms are requiring employees to work from home or are imposing their own travel bans. There is a risk seemingly healthy travelers may be unknowing carriers. Those who disregard public health advisories discouraging unnecessary travel put themselves at risk and may cause drastic harm to others, particularly seniors and others who are at a high risk.

Even without travel bans, many arbitration practitioners are leery of travel and hosting delegations from affected areas. Likewise, practitioners from affected regions are hesitant to impose on others. There is also the risk that healthy travelers will be confronted with an unexpected travel ban or quarantine upon arrival or departure. As a result, international arbitration will be curtailed not only where the virus is present but where it may be spread. Essentially, everywhere.

Nearly all major arbitration institutions have adopted precautionary measures, including encouraging protective healthcare measures in their offices, suggesting postponement of hearings and advising parties to refrain from attending hearings in person. Some parties, counsel and tribunals will respect these advisories; others will not. There is also concern some parties will take advantage of developments to needlessly delay arbitrations.

The virus is likely to lead not just to the delay or relocation of hearings but to the cancellation of meetings and conferences in various parts of the world. Legal conferences in Hong Kong, Singapore, elsewhere in Asia, and more recently, in Europe and in the US, have already been cancelled. Planners and potential attendees of major upcoming international arbitration conferences in largely unaffected locales are watching the developing situation closely.

Changes to the Way We Do Arbitration

Expect fewer handshakes and more elbow bumps and bows. As the stock markets teeter, the market for videoconferencing technology is booming. Undoubtedly, more evidentiary hearings will be conducted online or at least with some of the participants participating remotely. This sea change in the way international arbitrations are conducted may be the turning point in finally bringing online dispute resolution (ODR) to the world of international arbitration.

The virus will also affect the way evidence is created, gathered and transmitted. Reliance on paper contracts and documents sent through the mail or by courier is likely to be curtailed as the world relies more heavily on digital signatures and document transmissions to avoid spreading contagions. In turn, parties are more likely to conduct document searches, reviews and production digitally. As well, tribunals will prefer digital memorials and document submissions. The hard-copy evidentiary bundle is likely to go by the wayside as arbitrators who insist on paper submissions give way to those willing and able to operate digitally. Adoption of digital solutions may lead to increased implementation of artificial intelligence and other new technologies.

Sadly, we must expect there will be illness, if not deaths, among those participating in arbitrations. A serious pandemic could be devastating for many. The threat requires all of us to proceed in a cautious, thoughtful and civil manner. For now the best guidance is to follow the health and travel advisories of public health authorities including the World Health Organization, national health protection agencies, such as the Centers for Disease Control and Prevention (CDC) in the US, and local public health officials.

Without mitigation efforts, even localized outbreaks of the virus may have lasting impacts, causing loss of lives and weakening economies. Major, rapid outbreaks may mark the end of certain arbitral seats or the rise of others as states struggle to recover from economic, political or even military turmoil.

Potential Beyond the Virus

As long as some measure of global commerce continues, we can expect there will be a demand for international arbitration in the world. We may see more arbitrations as parties seek to avoid public forums.

If (let's be positive, when) we move beyond the virus, we may see much more international arbitration. Undoubtedly the virus will shake supply and pricing expectations in nearly every global market from commodities to industrial products. Many major energy and construction projects have come to a halt.

Many new claims will be initiated involving commercial delays or cancellations due to disruptions in construction, manufacturing of goods and provision of services.

Likewise, there will be claims relating to international transit, from shipping to rail to air and sea, including claims involving delays or cancellation of shipment of components for a wide array of consumer and industrial products. There will be claims relating to biotech, pharma and healthcare efforts to fight the outbreaks. Data privacy claims will be on the rise. Undoubtedly, we will see a significance increase in insurance claims in all sectors.

Conclusions

The coronavirus is a threat that can only be contained through the leadership of the global health sector and support from each of us as global citizens. We all have the obligation to be proactive about public safety. That requires taking recommended precautions with respect to healthcare and travel. As to arbitration, that includes organizing arbitral proceedings as efficiently as possible and relying on videoconferencing and other technologies to limit transmission risks.

With proper precautions, and a bit of luck, the coronavirus will be a short-lived problem. No matter what the outcome, it will change the world of international arbitration as we know it.

Gary Benton is the Chairman of the Silicon Valley Arbitration and Mediation Center (SVAMC) in Palo Alto, California. This article represents the views of the author and not necessarily those of SVAMC.

The Kluwer Arbitration Blog is closely following the impact of COVID-19 on the international arbitration community, both practically and substantively. We wish our global readers continued health and success during this difficult time. All relevant coverage can be found [here](#).