

The Green Pledge: No Talk, More Action

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In an industry which thrives on lofty ideals of amicable dispute resolution and open debate, it is startling to observe that the environmental impact involved in the conduct of international arbitrations has received little attention. This is not to suggest that the international arbitration community has completely ignored the issue, but the focus has been on policy-based issues relating to climate change, for example, the International Bar Association's Report on Climate Change Justice and Human Rights, or the ICC's publication entitled Dispute Resolution and Climate Change: The Paris Agreement and Beyond. These are all positive developments and must be welcomed, however, the stark reality is that there has been an absence of discussions about efforts that must be made at a personal level to address the carbon footprint as we engage in international arbitration proceedings.

The Campaign for Greener Arbitrations

The Campaign for Greener Arbitrations ("**Campaign**") is an initiative to address the carbon footprint of international arbitrations and mediations. The Campaign began life as a "Green Pledge" initiated by International Arbitrator, Lucy Greenwood, last summer after she noted the significant carbon footprint of the arbitral community and the reality that we are all collectively far behind the curve.

The Green Pledge was premised on a personal commitment by clients, counsel, and arbitrators to ensure to minimise the impact on the environment of every arbitration and mediation an individual is involved in. Nine micro-level changes have been identified in the Pledge:

- i) to *“consider and question the need to fly”* at all times during the arbitration;
- ii) to *“correspond [only] through electronic means”* unless the circumstances expressly require otherwise;
- iii) to *“request that electronic rather than hard copies of documents”* be provided;
- iv) to *“discourage the use of hard copy bundles in hearing rooms”*;
- v) to suggest that *“witnesses give evidence through video-conference”* rather than attending oral hearings in person, when appropriate (for arbitrators and mediators);
- vi) to *“be mindful that email has a carbon footprint”*;
- vii) to *“avoid traveling unnecessarily to deliberate with [] co-arbitrators/mediators and use screen sharing/video technology instead”* (for arbitrators and mediators);
- viii) to *“avoid traveling unnecessarily to conduct fact finding or other interviews with witnesses and use screen sharing/video technology instead when appropriate”* (for counsel); and
- ix) finally, an obligation on everyone to *“offset the carbon emissions of any flights”* taken for an arbitration or mediation.

The Green Pledge, therefore, required all of the participants to thoughtfully engage with their commitments to dispute resolution against the potential carbon impact it may have. The Green Pledge provided a series of factors that can be considered and even the application of some of these criteria will overall result in a better impact for the environment. Indeed, the Green Pledge has been nominated for the GAR “Best Development” Award 2020 for drawing the international arbitration community’s attention to its own carbon footprint. The Campaign is now expanding the Green Pledge to be global and more inclusive. While the Green Pledge began life as one arbitrator’s attempt to encourage others to make small changes in their behaviour, now the Campaign for Greener Arbitrations is growing

in momentum. It will include more diverse stakeholders within its ambit, such as arbitral institutions, law firms, hearing centres, and e-providers of arbitration services.

World on Fire: The Campaign is the need of the hour

The significance of the Campaign cannot be overstated in light of recent environmental catastrophes. For instance, when Australia was struck by devastating bushfires recently, scientists confirmed that human-caused climate change increased the risk of such bushfires by as much as 30%. Similarly, the European Commission confirmed that *“more countries than ever [were] hit by forest fires in 2018.”* In 2019, it was reported that forest fires in the EU were three times the average number of fires over the previous decade. In February, Antarctica logged its hottest ever recorded temperature, raising concerns over the accelerated retreat of the continent’s glaciers and rising sea levels. The international arbitration community can no longer ignore the severity of environmental damage caused by human actions, especially when the carbon footprint of international arbitrations is immense, as demonstrated below.

An Environmental Impact Assessment of International Arbitrations

An Environmental Impact Assessment is the first step to address questions of climate change at a personal level in international arbitration. It comprised a study into the key environmental effects of a proposed action and was undertaken by the Campaign’s Steering Committee (**“Steering Committee”**), supported by a team from Dechert LLP, for international arbitrations.

The Steering Committee conducted a case study of a medium-sized (valued at US\$30-50 million) international arbitration to determine its individual carbon footprint. Naturally, several assumptions had to be made, which were deliberately conservative and made in consultation with an NGO to ensure accuracy. For example, in calculating the number of printed sheets generated in the case study, the Steering Committee only included an estimate of the printed pages submitted to the tribunal and disregarded all internal printing and the generation of drafts.

The total carbon impact in kg CO₂e of the arbitration used as the case study was 418,531.02. This would require planting more than 20,000 trees to offset its emissions! Global Arbitration Review notes that this is a “number equivalent to four times the number of trees in Hyde Park or all the trees in Central Park.”

Towards ‘Green Arbitrations’

More than 93% of the identified emissions related to travel, particularly air travel by business class, which, depending on size and area of the seat, is usually two or three times as energy intensive as traveling in economy class. Reducing one long distance flight for every arbitration would result in significant carbon savings, as would eliminating hard copy submissions.

The Committee looked at a “Green Arbitration.” This involved changing the assumptions as follows: (i) eliminating paper bundles, (ii) reducing the amount of travel and (iii) eliminating motorbike couriers due to the alternative use of e-bundles and video conferencing. These changes resulted in conserving 51,704 kg CO₂e per arbitration, which is ten times as much as the carbon footprint of every individual in the UK.

There are two key actions arising from the environmental impact assessment: (i) fly less; and (ii) stop using hard copy bundles.

Simply reducing the number of flights by one at each stage of every arbitration would reduce costs by half and emissions by a quarter. Travel objectives could be met by using video more frequently to interview and prepare witnesses and taking the self-evident step of flying the witness to the team rather than the team to the witnesses. Arbitrators should also be more receptive to discussing whether it is appropriate to take the testimony of certain witnesses by video. Similarly, shifting from hard copy bundles is desirable because paper production is very resource heavy – requiring not just trees, but also water and fossil fuels. The Campaign plans to expand its research to consider email use and energy consumption, as well as other aspects of an international arbitration practice beyond those analysed in the initial impact assessment.

COVID-19: Proving that technology is the way forward

The COVID-19 pandemic has had a serious impact on virtually every aspect of our lives and the consequences of this pandemic are not fully known yet. On one hand, quarantining people, closing businesses, and having employees work from home has led to reduced congestion, and therefore reduced emissions, on the streets. In China, public transport in Wuhan was shutdown following the outbreak.

It is predicted that global CO2 emissions could fall because of the pandemic. On the other hand, the COVID-19 pandemic has also exposed human wastefulness and its adverse effect on the environment. Private airlines continue to operate 'ghost flights' with few or no passengers for fear of losing airport slots allotted to them. However, the COVID-19 pandemic is forcing all participants to use technology in a more thoughtful and considered manner. Indeed, it has forced the international arbitration community to consider the Green Arbitration alternatives by reliance on technology in place of in-person hearings. But it is not just arbitrations that are considering alternatives but even moot court competitions. This is best illustrated by the Vis Moot, the hearings of which are being organised online because both the Hong Kong and Vienna editions are cancelled. Some arbitral institutions are also considering paperless alternatives to hard copy submissions, for instance, ICSID recently announced that Electronic Filing would be its default procedure.

What can you do?

You can do your bit signing the Green Pledge and actively reducing the carbon footprint of international arbitrations. Adopt the nine guidelines in both existing and future arbitrations/ mediations and strive to raise the bar in every subsequent proceeding.

The Campaign will launch formally on Earth Day (22 April 2020). Please contact lucy.greenwood@greenwoodarbitration.com if you are interested in getting involved.