

Six Lessons from the Sixth Sarajevo Arbitration Day

Kluwer Arbitration Blog

November 14, 2020

Fahira Brodlija (Arbitrator Intelligence) and Irfan Osmanović (Sudžuka & Co. d.o.o.)

Please refer to this post as: Fahira Brodlija and Irfan Osmanović, 'Six Lessons from the Sixth Sarajevo Arbitration Day', Kluwer Arbitration Blog, November 14 2020, <http://arbitrationblog.kluwerarbitration.com/2020/11/14/six-lessons-from-the-sixth-sarajevo-arbitration-day/>

The Sixth Sarajevo Arbitration Day conference took place on 23 October 2020 and it was dedicated to the opportunities to adopt positive arbitration practices amidst the challenges created by the Covid-19 pandemic. This annual conference organized by the Association ARBITRI took place online for the first time and gathered legal practitioners from all over the world to hear from six of the leading international arbitration experts. Under the umbrella of the overarching theme of seeking opportunities for better arbitration, each speaker informed and inspired the participants with their insights and experiences in the field. The main lessons drawn from the conference are outlined below.

Less talk, more action - The Three E's in International Arbitration

The keynote speaker Lucy Greenwood cautioned that international arbitration as an industry has lagged behind in three E's: efficiency, equality and environmental care for decades. However, the recent developments caused by the Covid-19 pandemic are a good starting point in providing more attention and action to these important matters. This pandemic gave us the opportunity to pause and reflect on our wasteful ways of life and business which directly decrease the efficiency of arbitration. Efficiency could be increased, and costs reduced if we tackled the issues of other two E's and if International arbitration would no longer waste

talents and natural resources, aside from time and costs. Ms Greenwood highlighted that the increased reliance on virtual hearings and speaking engagements can enhance the equality and diversity in international arbitration, by providing exposure for junior lawyers from diverse backgrounds. Additionally, Ms. Greenwood stressed that international arbitration practitioners from "flight pride" and that instead we should suffer from "flight shame" because 93% of carbon emission related to international arbitration comes from air travel. We must embrace behavioural changes caused by this pandemic and embrace video conferencing, paperless arbitration and sustainability because the Environmental E is already a dangerous emergency.

The window of opportunity is wide open

The secondspeaker, Professor Mohammed Abdel Wahab, described the Covid-19 pandemic as a door of opportunity for international arbitration, which should be approached with a positive outlook and sincere optimism. Even though 2020 was the most stressful year in lives of many people, Professor Abdel Wahab holds that the silver lining of the pandemic is getting broader rather than thinner for arbitration industry. He noted three effects of the pandemic on international arbitration: the pandemic will be a catalyst for the transformation of arbitral proceedings as we know them, it will lead to the development of new digital legal support tools and services and different generations of arbitration practitioners will find a way to adapt to the new and flexible working arrangements.

Abdel Wahab also pointed out that the new approach to arbitration practice will make tech savvy arbitration practitioners indispensable, and the removal of physical barriers in the virtual setting will allow the breakthrough of persons who previously had limited visibility and mobility- a phenomenon described as the "New blood transfusion". Professor Abdel Wahab concluded by touching upon the likely regionalization of international arbitration where the arbitrators and counsels might be selected not because of their skills but because of their national or regional proximity which will simplify the technical organization of arbitral hearings.

Virtual arbitration is here to stay

The third speaker, Steven Finizio (WilmerHale London) focused on the idea of the increased efficiency of virtual hearings in international arbitration. The key idea was that international arbitration needs to be flexible and tailored for the needs of the parties in order to remain more attractive than national court litigation. To achieve this, arbitration professionals need to reconsider their habits and make sure that they abandon practices which are reflexive and not thoughtful. This pandemic has certainly forced us to revisit the use of technology and embrace it in international arbitration where cases are going forward – unlike the national courts where the backlog are only getting worse. Mr Finizio pointed out that we need to make sure that arbitration remains a better option than court litigation through technology and flexibility. Finally, Mr. Finizio addressed the criticism of virtual hearings, such as the opinion that use of technology makes arbitration less serious and emphasized that arbitral awards have been rendered in virtual arbitral proceedings and that there is no reason to believe they are any less legitimate than the awards issued under normal circumstances.

Hearings etiquette and technical support in virtual hearings

The fourth speaker, Florian Haugeneder (Knoetzi Vienna) shared reflected on the practice of remote hearings in international arbitration, from first-hand experience. He noted that the Covid-19 pandemic transformed the perception of remote hearings among international arbitration practitioners, which were not a common practice just one year ago. Addressing the admissibility of remote hearings, Mr. Haugeneder explained that remote hearings are a procedurally permissible *modus operandi* which is also used in court proceedings and cannot be seen as a violation of Article 6 of the ECHR, i.e. the right of each individual to have a fair and public hearing before a neutral tribunal established by law. Mr. Haugeneder highlighted some of the practical steps we can take to improve the quality of remote hearings by emphasizing the importance of hearing etiquette: muting the microphone while others speak, preventing audio and video interruptions and refraining from private statements in remote hearings He also suggested that capacity building and technical assistance for arbitration practitioners in remote hearings can improve the quality of the proceedings and the level of trust and reliance in the process. Finally, Mr. Haugeneder concluded that remote hearings are here to stay but that they probably will not entirely replace physical hearings because people will always prefer in-person interactions over online meetings.

The doors of the Vis East are open to anyone with a computer, internet and the CISG

When Coronavirus struck Hong Kong in January 2020, Louise Barrington (ArbitalWomen) knew that cancelling a Vis East competition in international arbitration scheduled for March was not an option. Months of legal analysis, drafting and teamwork could not simply be ignored. As discussed in a previous [blog post](#), for the first time ever, the competition was held online and, as Ms Barrington notes, it was a huge success that highlighted the flexibility of international arbitration and its ability to overcome difficulties. 72 out of the original 138 signed up for the online competition and have overcome the reluctance to embrace this technological step. Ms Barrington noted that the introduction of technology in arbitration moot competitions also enabled more arbitrators to participate because they no longer had to travel from across the world. Organizers soon realized that online moot competitions actually opened the doors for more “mooties” and more diversity into the world of Vis East since financial constraints, visa requirements and geography were no longer constraints. The Vis East, as a powerful generator of future international arbitration experts and practitioners, became open to anyone who has a computer, internet and the CISG.

Arbitration is no longer a playground for the select few

Catherine Rogers (Arbitrator Intelligence), as the final speaker of the conference described the Covid-19-motivated, transparency-driven innovations in international arbitration as an opportunity for “The Rise of the Rest”. Smaller arbitration institutions, less known arbitrators and smaller disputes are finally getting the opportunity to „go out there“ and venture into the world of international arbitration. The old traits success in international arbitration, such as the number of flights taken to participate in proceedings or number of appointments, are no longer an eligibility factor for those seeking first appointments. Nowadays, the proficiency in technology is its own marker of success in international arbitration, for both counsel and arbitrators. Ms Rogers pointed out that we should welcome the breakdown of these stale myths and markers and accept the fact that international arbitration needs to expand to Africa, Latin America and Asia instead

of sticking with North America and Europe – which are all long established arbitration hubs. Finally, Ms Rogers emphasized the importance of the availability and equal access to information about diverse arbitrators to all stakeholders. She highlighted the need for data-driven resources, such as [Arbitrator Intelligence reports](#), which will level the playing field and provide visibility to arbitrators from diverse backgrounds, as discussed on [previous blog posts](#).

Although all the speakers touched upon the „new-normal“ in international arbitration from different perspectives, there is a common thread of opportunity and the recognition that these uncertain and challenging times can result in sustained positive change. The Seventh Sarajevo Arbitration Days will be an opportunity to look back and see if the predictions and insights from this conference still hold true. We hope to see you there.

The full recording of the Sixth Sarajevo Arbitration Day conference is available on the Association ARBITRI YouTube Channel