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Arbitral Seats – An Empirical Overview

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On 9 May 2018, the School of International Arbitration at Queen Mary University of London, in partnership with White & Case LLP, launched the Report of the 2018 Queen Mary/White & Case International Arbitration Survey: The Evolution of International Arbitration. As its title suggests, the survey sought to assess user perceptions of the evolution of key issues in international arbitration, both by looking at recent developments but also by challenging respondents to predict what the future of international arbitration might hold in store. The findings of the survey draw from 922 questionnaire responses and 142 interviews. The record number of responses and interviews, as well as the wide geographical spread of contributing users [1], make this survey the most comprehensive empirical study that has ever been conducted in international arbitration.

One of the key topics addressed by the 2018 Survey is the recent evolution of arbitral seats. In particular, the survey sought to identify (1) the seats that users prefer, and (2) what drives their preferences.

- **Preferred seats**
- **Global rankings**

In our 2015 Survey, seven seats emerged as the most popular amongst respondents, in the following order: London (47%), Paris (38%), Hong Kong (30%), Singapore (24%), Geneva (17%), New York (12%), and Stockholm (11%).[2] Three years later, perhaps unsurprisingly, the top seven ranking of the most preferred seats is populated by these same seven cities. What is more, their order of preference is also largely left unchanged: London (64%), Paris (53%), Singapore (39%), Hong Kong (28%), Geneva (26%), New York (22%), and Stockholm (12%).

Among these well-established seats, London and Paris particularly continue to reinforce their leading positions in the market, with London surging ahead of Paris by a margin of more than 10%. It remains to be seen, of course, whether Brexit will impact in any way this established duo. The only variation from the 2015 survey is the change in the order between Singapore and Hong Kong. Singapore now features third (from fourth in the 2015 Survey) with a significant rise in its popularity from 24% in the 2015 Survey.

Beyond these seats, it is noteworthy that we received a record number of more than 140 distinct entries of cities and countries across all continents (except Antarctica). Here, countries like the

United Arab Emirates, Nigeria, India, and Poland are just several jurisdictions whose seats were nominated twenty times or more. In fact, the lower segment of the top most preferred seats worldwide (i.e. outside the top seven ranking) is occupied by a rather eclectic group: São Paulo takes eighth place (8%), followed closely by Zürich (8%),^[3] Vienna (6%), Washington, D.C. (5%), Miami (4%), the Hague (4%) and Rio de Janeiro (3%). These findings reflect the truly global nature of international arbitration, as well as the amount of choice users enjoy.

Having said that, it is also noteworthy that the seven most popular seats have collectively increased their popularity by an average of approximately 11% compared to their respective 2015 figures. It appears that these seven seats form a group of “elite seats” which enjoys excellent popularity among users and that it is likely that their dominance will further consolidate in the future.

- *The regional picture*

While the global rankings may reflect a reinforced consolidation, rather than fluctuation, the regional standings show slightly different dynamics. An analysis of subgroups of respondents based on the geographic regions^[4] where they principally practise or operate revealed both consistencies, as well as some variations.

On the one hand, London and Paris feature in the top four most preferred seats in all regions, thus establishing themselves as truly global hubs for international arbitration. Most notably, London secured the top spot in every region, albeit by a small margin in Asia-Pacific and Latin America. Singapore was also among the top four choices in all regions, except Latin America.

On the other hand, it is noteworthy that the standings vary depending on the region. Singapore, for instance, was the second most preferred seat in Asia-Pacific, ceding the top spot to London by only a tiny margin. Another example was São Paulo which, although fell just short of making the top seven seats worldwide, came fourth in the Latin American subgroup. In Europe, Geneva took the third spot as Hong Kong fell to the seventh. In the two Americas, New York climbed up to third place while Africa and the Middle East reported a particular appreciation for Geneva, putting it in third and fourth place, respectively.

- **Reasons for preferring a given seat**

Data shows that the factors that decisively shape most users’ preferences for certain seats are relatively few. Respondents expressed that the most important driver for preferring a certain seat relates to its “general reputation and recognition” (14%), closely followed by “neutrality and impartiality of the local legal system” (13%), “national arbitration law” (12%), and “track record in enforcing agreements to arbitrate and arbitral awards” (11%).

The most selected reason, namely the seat’s general reputation and recognition, may be indicative of the fact that users tend to assess seats from a macro perspective, that they are perhaps prone to give considerable weight to a seat’s general perception in the international arbitration community, rather than engaging right away in a thorough scan of its features.

The other three most important reasons voted by respondents essentially revolve around the ‘formal legal infrastructure’^[5] of a given seat. In other words, users are particularly looking to make sure that the arbitration laws and the local judiciary at the seat of their choice are supportive of the arbitral process and provide sufficient indications of predictability and impartiality. In particular, respondents look at whether, and to what extent, the national arbitration law is based on

the UNCITRAL Model Law and whether the country concerned is a signatory of the New York Convention (although this is nowadays more likely than not). What respondents tend to evaluate, then, are the core features of the local legal system, as seen through the lens of an arbitration user. Ultimately, a seat’s “general reputation and recognition” is in effect primarily comprised of, and underpinned by, these exact systemic features reflected in the other three most selected reasons for preferring that seat. It can therefore be argued—and the very close figures indeed suggest—that all of these four reasons should be read holistically.

One of the key—though perhaps slightly overlooked—takeaways from our research into seats is that arbitration is a truly global phenomenon. As 97% of respondents indicated that international arbitration is their preferred method of dispute resolution and more than 99% of the same sample expressed that they would choose or recommend international arbitration for future cross-border disputes, we have reason to believe that the practice of international arbitration will reach uncharted territory in the foreseeable future.

[1]Based on where respondents principally practise or operate, responses were collected from users on all continents, except Antarctica.

[2]2015 Queen Mary/White & Case International Arbitration Survey, at p. 12 (Chart 8).

[3]As was the case in 2015, Switzerland seems to be a particularly popular jurisdiction given that 38% of respondents included at least one Swiss city or Switzerland itself in their answers. Among the Swiss cities, Zürich is the second most popular seat after Geneva.

[4]The 2018 Survey uses the following six regions to present its findings: Europe, Asia-Pacific, Latin America, North America, Africa, and the Middle East.

[5]The phrase was coined in the 2010 Queen Mary/White & Case International Arbitration Survey (see p. 17 *et seq.*).

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