
Kluwer Arbitration Blog

2022 Year in Review: Technology

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The year 2022 was a busy one at the intersection of technology and international arbitration, both for the arbitration community and for the Kluwer Arbitration Blog. Virtual hearings further cemented their status as a mainstay of arbitral practice; we saw a burst of guidance, soft law instruments and rule-setting activity; and our [Arbitration Tech Toolbox](#) grew to 12 posts, covering issues as diverse as enforcing automated arbitral awards, cybersecurity training and conducting arbitral proceedings in the Metaverse.

Use of technology in arbitrations: to the Metaverse and beyond!

We witnessed a further normalization of the use of videoconferencing technologies to conduct arbitration proceedings and hold meetings of arbitral institutions. In May, ICCA [released](#) the findings of its Right to a Physical Hearing Project. Notably, of the 78 jurisdictions surveyed, no *lex arbitri* expressly provided parties to an arbitration with the right to a physical hearing. Most national reporters further found that the right to a physical hearing is in fact implicitly excluded. As one panelist [commented](#) at the 17th ICC New York Conference on International Arbitration, “virtual hearings are here to stay.” Our contributors [noted](#) the May 2021 launch of the *Protocol for Remote or Virtual Arbitration Hearings* by the Latin American Arbitration Association, a tool that incorporates best practices to ensure that procedural rights of arbitration users are protected. Addressing this theme at the 2022 Taipei International Conference, panelists [stressed](#) that while virtual hearings may not lead to annulment of an award, arbitrators will place due process and access to technology front and center in assessing the role of technology in arbitral proceedings.

As parties, counsel, arbitrators, and institutions came to terms with videoconferencing, technophiles charged ahead with nascent technologies: avatars in the Metaverse and holograms for witnesses. In February, the first-ever international arbitration gathering [in the Metaverse](#) was held. The ArbTech-supported event included a mix of video participants and virtual reality (VR) headset-enabled avatars. It sparked several observations on the use cases of VR in international arbitration. In October, our contributor covered a [panel](#) at the Future of Technology in Arbitration (#FOTA22) conference, aptly titled “*Help me Sophie Wan Kenobi, You’re My Only Hope*”. The panel featured a hologram participant who reported being able to see, face and address both the

audience and fellow panelists physically present on stage. The tech-minded audience were so impressed that, in a vote, a majority found appearance by hologram to be appropriate for remote hearings and predicted that by 2030 we will have hologram witnesses.

One thing is clear. Technology is moving at an increasingly accelerated rate. As new technologies are developed, emerging members of the arbitration community appear poised to take full advantage of the opportunities presented.

Technology disputes: nomenclature, rules, and arbitration prospects

Top of mind for many practitioners this year was the role of arbitration in the resolution of technology disputes. UNCITRAL [held a Colloquium](#) that explored such issues and provided a forum for debate on a potential set of arbitral rules specifically catered to technology disputes. Key considerations were the need for clarity on the sphere of application for the rules, effective and expeditious case management, and a default rule on confidentiality as between the parties. The value of conceptual clarity in the term “technology disputes” was further underscored during Australian Arbitration Week, where [a panel](#) discussed an array of disputes that could fall within the term, including joint venture agreements to co-develop technology, licensing disputes, and tort and compliance actions for massive data breaches.

Our contributor [provided an overview](#) of the [Digital Dispute Resolution Rules](#) (“DDRR”), one of the first major efforts to establish rules for the resolution of digital asset disputes. Created by the UK Jurisdiction Taskforce, our contributor noted that the DDRR are designed to be incorporated into on-chain digital relationships and smart contracts, and they are a welcome addition to other rule-setting efforts, such as the [JAMS Rules Governing Disputes Arising out of Smart Contracts](#), and tech-bespoke dispute resolution mechanisms, such as [Kleros](#) and [Codelegit](#).

The Metaverse held great interest, with many contributors considering what impact the alternate virtual universe would have on arbitration, in theory and in practice. One contributor [noted](#) that arbitrating claims in the Metaverse – particularly through the use of self-executing arbitration agreements – may pose recognition and enforcement challenges under the New York Convention, but saw the “more favorable rule” in Article VII(1) as a way forward, possibly by allowing the incorporation of digital-friendly provisions in the UNCITRAL Model Law on Electronic Commerce and United Nations Convention on the Use of Electronic Communications in International Contracts.

Another contributor [mused](#) that the Metaverse may enable Julian Lew’s dream of autonomous arbitration to come to fruition, with decentralized arbitration platforms providing greater access to justice in the Metaverse. A further contributor [explored](#) the first ever court decision to enforce an arbitral award which relied on a blockchain arbitration protocol.

Greater guidance on technology and cybersecurity

2022 was also a busy year for the development and implementation of soft law instruments and other guidance on the use of new and emerging technologies in international arbitration. We began the year with an [interview](#) with Dr. Gordon Blanke, lead drafter of the [CIArb Framework Guideline on the Use of Technology in International Arbitration](#). The Guideline seeks to introduce a number of general principles of guidance on the use of technology in arbitration, and serves as a stepping stone for more detailed guidelines on the use of specific technologies in arbitration both now and in the future. Key principles include proportionate, fair, transparent, and secure use of technology.

The ICC's Commission on Arbitration and ADR issued its Report, *Leveraging Technology for Fair, Effective and Efficient International Arbitration Proceedings*, which identifies prevalent technology used to support international arbitration, describes features and functionality that may enhance the arbitral process, and discusses useful procedural practices and pitfalls to be avoided.

The importance of cybersecurity was stressed in both publications and was taken up in an [Arbitration Tech Toolbox post](#) which introduced a new CyberArb training on the topic.

At the ICCA Congress in Edinburgh in September, the ICCA-NYC Bar-CPR launched its updated *Protocol on Cybersecurity in International Arbitration*, which aims to increase cybersecurity awareness in international arbitration and provide a framework for incorporating cybersecurity measures in arbitral proceedings.

Crypto disputes: surviving the Crypto Winter

The Crypto Winter's chilling effect on the sector encouraged an [assessment](#) of the types of legal, practical or valuation challenges that arise in disputes related to crypto assets. Our contributors noted the heterogeneous approaches taken by regulators with respect to cryptocurrencies and other crypto assets, giving rise to concerns of arbitrability and denial of enforcement based on public policy grounds. A host of other issues affect crypto-related arbitration, including difficulty (i) securing interim measures over crypto assets; (ii) identifying the proper counterparty; (iii) valuing crypto assets; and (iv) enabling class actions to resolve mass-disputes. The post, published September 29th, came one month before the [dramatic collapse](#) of FTX and related entities, a development that made the Crypto Winter look like a balmy Spring and injected further uncertainty, both into the long-term viability of the sector and regulatory acceptance of arbitration as a means to resolve crypto asset disputes.

Conclusion

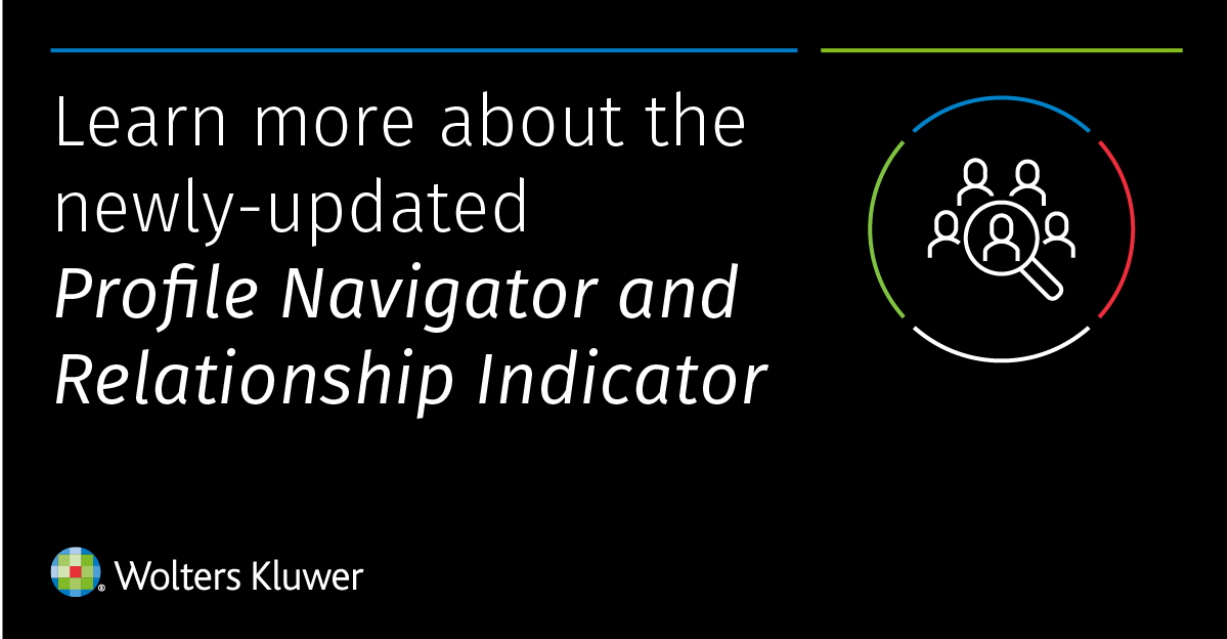
It was a busy year for technology and arbitration, but 2023 will no doubt bring more advancements, opportunities, and challenges. Having recently expanded our technology editorial team to include two new assistant editors, we welcome your submissions on the intersection of technology and international arbitration and thank you for your readership this year.

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