DOI https://doi.org/10.5817/CZ.MUNI.P210-8639-2021-1

Virtual Arbitration Hearings in Times of COVID-19 (And Beyond)

Bára Bečvářová
Faculty of Law, Charles University, Czech Republic

Abstract

Until 2020, arbitration hearings usually presumed a physical presence of all participants in one room. Although hearings conducted by way of remote communication, i.e., virtual hearings, have been technically possible for several years, their use was limited at best. Due to travel restrictions imposed by the COVID-19 pandemic, the situation changed rapidly and virtual hearings came into the focus of the arbitral community. Mindful of the changing attitudes, this paper firstly discusses attributes of the virtual hearings, their advantages and challenges. Furthermore, with the benefit of the hindsight, the second part looks at how the arbitral institutions handled the "new normal" imposed by COVID-19 in terms of the guidance provided to the tribunals and parties.

Keywords

Virtual Arbitration Hearings; Due Process; Arbitration Rules; Arbitral Institutions; COVID-19.

1 Introduction

International arbitration became a fully independent field of practice and research in the 1950s[1] which makes it comparatively much more modern than court litigation. Nevertheless, oral hearings in arbitration have been traditionally following much older litigation template (with fewer formalities and no wigs). Or at least that is how I would explain the strong preference for in-person hearings in arbitration which remained mostly unchanged

1 SCHINAZI, M. The Three Ages of International Commercial Arbitration and the Development of the ICC Arbitration System [online]. *ICC Dispute Resolution Bulletin*. 2020, no. 2, p. 63 [cit. 10. 6. 2021]. Available at: https://www.shearman.com/Perspectives/2020/08/The-Three-Ages-of-International-Commercial-Arbitration-and-the-Development-of-the-ICC-Arbitration

by the new means of remote technology. Even after videoconferencing became accessible and arbitrators could have been tempted by their practical convenience or more abstract motivators, such as reduction of one's carbon footprint,[2] the "frequent" users of virtual hearings still represented just a very small percentage of arbitration practitioners.[3] In other words, the potential advantages of virtual hearings were largely lost on the arbitration community and relevant means of communication remained untested.

In 2020, COVID-19[4] pandemic momentarily froze the cross-border movement[5] and the field of arbitration was suddenly pushed to challenge the *status quo*. Within the next year, the number of virtual hearings rose rapidly.[6] In a sense, the adaptation of virtual hearings helped to maintain one of the biggest advantages of arbitration, speed, and showcase another, flexibility, or adaptability. In support of the practitioners, many arbitral institutions around the globe were quick to provide guidance on the conduct of virtual hearings, underlining the importance of their existence. In some cases, these efforts were then followed by changes in the arbitration rules to further welcome the development.

2 See, for example, the Campaign for Greener Arbitrations which was founded in 2019; more details available at Campaign for Greener Arbitrations. *greenerarbitrations.com* [online]. 2021 [cit. 10. 6. 2021]. Available at: https://www.greenerarbitrations.com/about

3 See Chart 35 in 2018 International Arbitration Survey: The Evolution of International Arbitration. School of International Arbitration. *Queen Mary University of London* [online]. 2018 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF

4 All references to "COVID-19" stand for the coronavirus disease which was identified and started to spread from Wuhan, China, in early 2020. See WHO Statement regarding cluster of pneumonia cases in Wuhan, China. *WORLD HEALTH ORGANIZATION* [online]. 9. 1. 2020 [cit. 10. 6. 2021]. Available at: https://www.who.int/china/news/detail/09-01-2020-who-statement-regarding-cluster-of-pneumonia-cases-in-wuhan-china

5 For example, in March 2020, EU has closed its borders for 30 days. See COVID-19 Guidance on the implementation of the temporary restriction on non-essential travel to the EU. On the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy. *European Commission* [online]. 30. 3. 2020 [cit. 10. 6. 2021]. Available at: https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-migration/20200330_c-2020-2050-report_en.pdf

6 See Chart 13 in 2021 International Arbitration Survey: Adapting arbitration to a changing world. *Queen Mary University of London* [online]. 2021 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

In this paper, I firstly focus on what remains unchanged regardless of COVID-19, the description of virtual hearings, its aspects and related logistics, and also potential grounds for challenge of such procedure and first court responses thereto. Secondly, I take a look at how the arbitral institutions have handled the COVID-19 situation.

In order to make the topic manageable, I will be mostly excluding specific areas of cybersecurity, ethical or even health concerns,[7] as well as analysis of any specific national arbitration laws, basing my analysis on the assumption that virtual hearings as such do not automatically undermine due process in arbitration.

2 Attributes of Virtual Hearings

Before starting the discussion, I would like to reserve a few lines for a proper definition of the term "virtual hearings".[8]

Excluding the "document-only" arbitrations, arbitration hearings represent one of the distinguishable phases in the process of arbitration which usually follows after the parties' written submissions. Arbitration hearings represent direct communication between the parties and the tribunal, usually including examination of evidence, especially evidence presented by (expert) witnesses, and related exchange of legal arguments and statements.

Although the hearings may usually address the merits as well as procedure,[9] it should be distinguished from mere procedural sessions/meetings used to organize the arbitration at its outset. Discussions dedicated purely to organization, e.g., "case management conferences"[10], were more usually conducted by remote means of communication even before COVID-19 and

7 NAPPERT, S. and M. APOSTOL. Healthy Virtual Hearings. *Kluwer Arbitration Blog* [online]. 17. 7. 2020 [cit. 10. 6. 2021]. Available at: http://arbitrationblog.kluwerarbitration.com/2020/07/17/healthy-virtual-hearings/

8 In the context of this paper, the term "virtual hearings" will be used as a simplified reference to "virtual arbitration hearings".

9 For example, Art. 24 para. 1 UNCITRAL Model Law, which specifies the right to the hearings, does not include any restriction. To the contrary, during the drafting a proposal of such limitation was refused. See HOLTZMANN, H. and J. E. NEUHAUS. *A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary.* Alphen aan den Rijn: Kluwer Law International, 1995, p. 674.

10 This term is used, for example, in Art. 24 ICC Rules of Arbitration 2021.

as such are not subject of this paper. The only note in this regard is that according to 2021 survey, only 8% of practitioners would prefer to hold procedural conferences and hearings in person while the remaining 92% is almost equally divided between those who prefer a fully virtual form or a mix of the two.[11]

Furthermore, it is worth mentioning that virtual hearings are not interchangeable with the term "online dispute resolution" ("ODR"). ODR is a more general term standing for a *"mechanism for resolving disputes through the use of electronic communications and other information and communication technology"*.[12] ODR may be used in arbitration but also mediation or negotiation. Although virtual hearing may be potentially included in the ODR process, document-only arbitration in the form of the ODR is also possible.

If arbitral hearings are not held in person but remotely, using some kind of a teleconferencing platform, it can be described as a "virtual hearing". In that case, parties still have a direct contact with the exchange of arguments and presentation of evidence in real time, but the meeting takes place on a virtual platform, in a digital hearing room. The difference in the means of communication is not meant to change anything about the content or purpose of the hearings, however, as will be addressed below, virtual hearings have their specific challenges that may potentially affect their effectiveness or even security. This calls for two fundamental questions. Firstly, what is gained and lost in such a switch. Secondly, whether there are any due process concerns that need to be addressed in the case of virtual hearings in particular and, consequently, whether there are any potential grounds for a challenge.

2.1 Advantages and Challenges

Virtual hearing comprises of a set of technology which enables: video-conferencing, electronic communication (via chat), real-time transcription or recording, electronic bundling and presentation of evidence

11 See Chart 17 in 2021 International Arbitration Survey: Adapting arbitration to a changing world. *Queen Mary University of London* [online]. 2021 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

12 Technical Notes on Online Dispute Resolution. *UNCITRAL* [online]. 2017 [cit. 10. 6. 2021]. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

that allows for simultaneous display of submissions and documentary evidence to all participants in the hearing. All of these aspects will ideally be included into one soft-ware platform, however, in any less than ideal scenario, many of them may be omitted (for example, parties may not be interested in electronic bundling or real-time transcription) or supplemented otherwise, for example by a specialized chat software (skype, etc.).

The use of virtual hearings comes with a palette of new options to be considered in order to make use of the new possibilities and advantages. What advantages are those?

In the table below, I have attempted to summarize the practical advantages[13] of virtual hearings, together with the corresponding challenges:

Advantages[14]	**Challenges**[15]
Reduced cost and carbon footprint thanks to avoidance of international travel to one location.	**New specific costs** related, for example, to the cyber security measures or services of a virtual hearing manager.
(Time) efficiency – connecting via internet does not require any additional time (for travel to the location, etc.), which leaves more flexibility for scheduling and more time for the actual hearing. This effect is even more prominent with (expert) witnesses who may more easily connect only for the relevant portion of the hearings.	**Difference in time zones** may potentially lead to impractical timing. **Some aspects may be also more time consuming** (e.g., consecutive interpretation), and participants face technical malfunctions and screen fatigue which require more frequent breaks in the process
Better recording options, use of multiple or 360-degree cameras and possibility to adjust volume, zoom-in or re-visit the recordings after the virtual hearings (during deliberation)	**Loss of interactivity,** especially in relation to witness examination ("reading" the interaction, assessing credibility…), harder communication during the hearing for the counsel teams or the arbitrators.

13 I have purposefully left out the fact that virtual hearings are accessible to people in quarantine and follow the social distancing measures. The reason for this is the fact that these advantages were not relevant before COVID-19 and, hopefully, will not be needed in the long term. I have also left out issues of cybersecurity, potential ethical or procedural abuses and potential due process concerns which will be addressed separately.

14 See Chart 15 in 2021 International Arbitration Survey: Adapting arbitration to a changing world. *Queen Mary University of London* [online]. 2021 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

15 Ibid., chart 161.

In essence the summary above does not paint a black or white picture but above all, it shows that the core of the efficient virtual hearings is careful planning, which will now be addressed in detail.

2.2 Logistics of the Virtual Hearings

After the decision is made to hold an arbitral hearing virtually and the date is set, the participants need to agree on a platform which will be used for the meeting. This choice has various consequences and the available possibilities are wide. For example, the International Bar Association ("IBA") has lately published a list of more than a dozen available virtual hearing platforms,[16] including those specialized on ODR (for example, Immediation or Trustpoint.one) as well generally targeted software for everyday use (e.g., Microsoft Teams, WebEx or Zoom).

The diverse spectrum can make the choice of a "correct" platform challenging,[17] I would thus suggest firstly identifying platforms familiar to the tribunal (preferably based on the past personal experience with virtual hearings) and subsequently focusing on how well the short-listed platforms perform with respect to just several basic requirements such as: security (for example, specific ID for each meeting, use of passwords, manual verification of each participant upon entry, encryption of the communication, etc.), costs, document sharing (especially the possibility to share evidence or other documents during the oral hearings), recording, break-out rooms (other means of private conversation / deliberation of the tribunal without the need to leave the platform) and other practical features. The tribunal should also make sure that the full version of licensed software is used (there are either customized solutions or publicly available licensed platforms) and avoid any free-to-use public platforms due to concerns regarding security, confidentiality and data protection.[18]

16 Technology Resources for Arbitration Practitioners – Virtual Arbitrations [online]. *International Bar Association* [cit. 10. 6. 2021]. Available at: https://www.ibanet.org/technology-resources-for-arbitration-va#Content

17 For example, ICC refers to a compare table of available software which categorizes two dozens of different software features which may be considered. See ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic [online]. *International Chamber of Commerce*. 9. 4. 2020 [cit. 10. 6. 2021]. Available at: https://library.iccwbo.org/content/dr/PRACTICE_NOTES/SNFC_0025_EN.htm?l1=Practice+Notes

18 Ibid.

Apart from the fundamental choice of a specific platform for the virtual meeting, there are multiple other options which need to be considered and decided upon in order to make the logistics of the virtual hearing work as smoothly as possible. At first glance, it might seem a little too controlling. After all, certain logistics come also with physical meetings and arrangements are made without a need for specific decision making process. Does the situation change, if the parties trade dealing with the travel arrangements for dealing with decisions about the number of screens and pre-testing of the internet connection? I would argue that while logistic issues surrounding in person hearings are no different from any other type of meetings and their participants thus do not need to give them much of a second thought, virtual hearings do not come quite as naturally. A multiparty virtual meeting operated by a presiding arbitrator (maybe supported by a technical secretary) in accordance with certain procedures designed to maintain equality between the parties may easily be a new experience for the participants. And like any new experience without a "redo" option, it requires more careful planning as a first step towards fully enjoying the advantages offered by the technology. These considerations may have a form of a test run of the proceedings as well as the adoption of a specific protocol for the hearing that would summarize and provide best practice tips on a variety of issues, ranging from cybersecurity, technical requirements and virtual meeting etiquette (in sum: find the mute button in time) to details such as proper "name tags" for the parties or a list of attendees.

As is apparent from the above-mentioned, a potential check list for successful virtual hearings might have quite a few points that participants to the virtual hearings should figure out in advance and in line with their particular needs. One thing that seems more universal and should be thus pointed out as a common issue is the matter of "silent communication" among the legal counsels of one party or between them and their client. In this regard, I note that 40% of the respondents in the 2021 survey named difficulties related to communication among one legal team and with the client as one of the top disadvantages of virtual hearings.[19] From my point of view, each party should consider a secured way of communication

[19] See Chart 16 in 2021 International Arbitration Survey: Adapting arbitration to a changing world. *Queen Mary University of London* [online]. 2021 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

separate from the main communication channel (for example, separate from the chat function incorporated in the chosen platform) in order to eliminate the possibility of a human error.

2.3 Due Process in Relation to Virtual Hearings

Usually, oral hearings are considered to be mandatory unless the parties agree on documentary arbitration only.[20] If the hearings are held, the tribunal is obliged to observe due process, including parties' right to be heard and right to be treated equally. Breaches of the due process during the hearings may amount to successful ground for a set aside under Art. V of the United Nations Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards ("NYC").

In case that the parties agree on the use of virtual hearings, the only obstacles concern proper organization thereof. However, if the tribunal decides on the virtual hearing without the agreement of the parties, or even against their explicit objection, there is an added level of consideration for the tribunal and that is the compliance with the relevant arbitration law and arbitration rules in order to minimize any future concern regarding the enforceability of the award. It is worth noting that this consideration is mandatory whenever the arbitration rules require that arbitration tribunals make every effort to render an enforceable arbitration award.[21]

Full analysis of potential limitations in arbitration law in different jurisdictions is unfortunately beyond the scope of this paper[22] but general remarks on the issue are still due. Only a few national laws explicitly address virtual hearings, usually only to recognize it as a possible option for the tribunal.[23]

20 BORN, G. *International Commercial Arbitration*. Alphen aan den Rijn: Kluwer Law International, 2020, p. 2430.

21 For example, Art. 42 ICC Rules of Arbitration 2021.

22 A particularly helpful resource is however already in preparation under the International Council for Commercial Arbitration which has been publishing national reports on the issue September 2020 with a final report to be presented in September 2021 at: ICCA. Does a Right to a Physical Hearing Exist in International Arbitration? *ICCA* [online]. [cit. 10. 6. 2021]. Available at: https://www.arbitration-icca.org/right-to-a-physical-hearing-international-arbitration

23 SCHERER, M. Chapter 4: Legal Framework of Remote Hearings. In: SCHERER, M., N. BASSIRI and M. S. A. WAHAB (eds.). *International Arbitration and the COVID-19 Revolution*. Alphen aan den Rijn: Kluwer Law International, 2020, pp. 72–73.

The majority of arbitration laws around the world is silent on the form of an oral hearing or whether the virtual hearings may be ordered. In the absence of parties' agreement, the silence of the arbitration law (and, for the sake of the argument, I assume that the arbitration rules are also silent) leaves space for conflict between the right to a hearing[24] and the tribunal's broad discretion regarding the conduct of the arbitration procedure.[25] In such a scenario, if an oral hearing is planned, the tribunal should not force virtual form thereof without some specific reason for doing so beyond the simple convenience associated with properly planned and executed virtual hearing. These specific reasons were demonstrated in 2020, when restrictions surrounding the pandemic effectively stayed physical meetings, especially those requiring international travel. If that is the case, the tribunal has to consider also possible delays in the procedure which may be both significant and hard to estimate – this significantly adds to the argument that the tribunal should be able to decide in favour of the virtual hearings even if one party objects, in order to be able to proceed with the arbitration.

On the other hand, if a physical meeting is possible under the "standard" circumstances common before COVID-19 (e.g., without the need to multiply travel expenses to avoid closed borders or undergo mandatory quarantines), I see little reason why the tribunal should order the virtual hearings against objection of a party/parties to the arbitration. Even if it may be argued that properly organized virtual hearings save costs and/or time, the tribunal's obligation to observe efficiency of the proceedings should not be interpreted in a way that puts these above the parties' wishes. After all, these expenses are predominantly shouldered by them and were considered in line with the efficient arbitration process in the past.

In the event that a virtual hearing is held despite objections of one party, the question arises, whether that party may successfully argue against the enforcement of a future arbitral award under the NYC.

---

24 BORN, G. *International Commercial Arbitration*. Alphen aan den Rijn: Kluwer Law International, 2020, p. 3512.

25 It is typical that the arbitral tribunal decides on the matters of procedure, unless the parties agree or the arbitration rules provide otherwise. Example of such wording can be found in Art. 19 para. 2 UNCITRAL Model law: *"Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate."*

The NYC provides an exhaustive list of grounds for non-enforcement of an arbitral award in its Art. V NYC, several of which might be potentially relevant:

- **Art. V para. 1 letter b) NYC** – the inability to present one's case

  The right to present one's case may be regarded as a specific part of procedural public policy and is recognized and protected throughout jurisdictions[26] and under the NYC. Generally, Art. V para. 1 letter b) NYC may be invoked in cases of due process violations amounting to a *"grave procedural unfairness in the arbitral proceedings"*.[27] Examples of such malpractice include rigid enforcement of overly short time limits[28] or wide exclusion of evidence.[29]

  In relation to the virtual hearings, a party invoking Art. V para. 1 letter b) NYC would have to specify what limitation it faced, when presenting its case, due to the lack of physical hearing. In that regard, a potentially plausible argument under Art. V para. 1 letter b) NYC could be made if the scheduling of the virtual hearings repeatedly ignores time zone limitations of one party, forcing its witnesses, legal counsels, etc., to attend hearings entirely outside normal business hours (e.g., during the night of several days).

  On the other hand, the use of virtual hearings may also serve as a remedy for a potential breach of Art. V para. 1 letter b) NYC because virtual hearings enable the parties to present their arguments to the tribunals despite domestic lockdowns, personal quarantine or other restrictions.[30]

---

26 See also Art. 34 para. 2 letter a) point ii) UNCITRAL Model Law.

27 BORN, G. *International Commercial Arbitration*. Alphen aan den Rijn: Kluwer Law International, 2020, p. 3494.

28 SACHS, K. and C. T. PRÖSTLER. Chapter 28: Time Limits in International Arbitral Proceedings. In: SHAUGHNESSY, P. L. and S. TUNG (eds.). *The Powers and Duties of an Arbitrator: Liber Amicorum Pierre A. Karrer*. Alphen aan den Rijn: Kluwer Law International, 2017, p. 288.

29 MARGHITOLA, R. *Document Production in International Arbitration*. Alphen aan den Rijn: Kluwer Law International, 2015, pp. 185–250.

30 See AGHABABYAN, A., A. HOKHOYAN and S. HABIB,. Global Impact of the Pandemic on Arbitration: Enforcement and Other Implications. *Kluwer Arbitration Blog* [online]. 19. 8. 2020 [cit. 10. 6. 2021]. Available at: http://arbitrationblog.kluwerarbitration.com/2020/08/19/global-impact-of-the-pandemic-on-arbitration-enforcement-and-other-implications/

- **Art. V para. 1 letter d) NYC** – breach of the parties' agreement or arbitration law

  There are countless possibilities of a breach of parties' agreement or *lex arbitri* which makes the consideration more about the intensity and consequences of such a breach. In summary, Art. V para. 1 letter d) NYC requires that the breach is material, minor defects would not suffice.

  In the context of virtual hearings, is a change of the used venue and means of the communication of such importance that a shift to virtual hearing could constitute a material breach of procedure or even affect the award? Case law suggests a negative answer to this question. For example, in 2001 English High Court refused such argument under Art. V para. 1 letter d) NYC stating that *"a different location did not affect the fairness of the proceedings or prejudice to that party"*.[31] In my mind, argument under Art. V para. 1 letter d) NYC would be a hard one to make on its own, but it might be sensible to add it on top of other concerns.

- **Art. V para. 2 letter b) NYC** – violation of public policy

  Although the underlying idea behind NYC is that enforcement of an arbitral award shall be governed by international law, Art. V para. 2 letter b) NYC represents an important exception to that principle by giving national authorities limited room to prioritize national laws,[32] however, such prioritization is only possible when the award goes against core values, meaning that it *"disregards essential and widely recognized values which, according to the conceptions prevailing in* […]*, should form the basis of any legal order,"*[33] goes against *"values whose violation* […] *cannot tolerate"*[34] or affecting *"the basis of public and economic life or irreconcilably contradicts* […] *perception of justice"*.[35]

31 Judgment of the High Court of England and Wales of 19 January 2001, *Tongyuan (USA) International Trading Group vs. Uni-Clan Ltd.*, Case No. 2000 Folio No. 1143.

32 For example, awards which grant punitive damages may become unenforceable in some jurisdictions as a matter of public policy under Art. V para. 2 letter b) NYC. See PETSCHE, M.A. Punitive Damages in International Commercial Arbitration: Much Ado about Nothing? *The Journal of the London Court of International Arbitration*, 2013, Vol. 29, no. 1, p. 100.

33 Judgment of the Supreme Court of Switzerland of 8 March 2006, *Tensacciai S.P. A vs. Freyssinet Terra Armata S.R.L.*, Case No. 4P. 278/2005.

34 Judgment of the Court of Appeal of Paris of 16 October 1997, *Agence pour la sécurité de la navigation aérienne en Afrique et à Madagascar vs. M. Issakha N'Doye*, Case No. 96/84842.

35 Judgment of the Higher Regional Court of Munich of 28 November 2005, Case No. 34 Sch 019/05.

> I have intentionally cited the strong wording used in case law as a foreshadowing to my conclusion that the use of the virtual hearings may hardly arise to such a substantial violation. Even if the national courts of the relevant jurisdiction do not use remote means of communication themselves, it is hard to imagine that they would consider it as something intolerable or in blatant disregard of justice. On the contrary, many national courts have conducted virtual hearings throughout 2020 which is good news also for the enforceability of awards originating from similar procedures.

Maybe it is the relative rareness of the virtual hearings that have kept the potential grounds for challenge or set-aside untested. However, the first court case has emerged in the second half of 2020, when the issue of virtual hearings was raised before the Austrian Supreme Court.[36] To summarize the facts of the Austrian case, the underlying arbitration had a seat in Vienna and was conducted under the rules of the Vienna International Arbitral Centre ("VIAC"). The losing party challenged the tribunal's decision to conduct evidentiary hearing remotely via a videoconferencing tool.

The ruling recognizes that the threshold for upholding objections to a procedural decision is high and such objection may only succeed if the tribunal's decision results in a serious procedural violation or permanent and significant (dis)advantages to a party. Keeping this threshold in mind, the court decided that remote hearings were generally permissible under Austrian arbitration law[37] and within the broad discretion of the tribunal on procedural matters including the organization and conduct of the proceedings. Furthermore, alleged inadequacies of remote hearings, such as witness tampering or inconvenient differences in time zones, were considered to be either theoretical or redeemable.[38]

36 Judgment of the Austrian Supreme Court of 23 July 2020, Case No. 18 ONc 3/20s.

37 Act No. 113/1895 Coll., Code of Civil Procedure, RGBl, Sixth Part, Fourth Chapter, as inserted by the Arbitration Law Reform Act No. 7/2006, BGBl. I. *Rechtsinformationssystem des Bundes* [online]. [cit. 10. 6. 2021]. Available at: https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2006_1_7/ERV_2006_1_7.html (German and English language versions).

38 For more details see SCHERER, M. et al. 'First' Worldwide, Austrian Supreme Court Confirms Arbitral Tribunal's Power to Hold Remote Hearings Over One Party's Objection and Rejects Due Process Concerns. *Kluwer Arbitration Blog* [online]. 24. 10. 2020 [cit. 10. 6. 2021]. Available at: http://arbitrationblog.kluwerarbitration.com/2020/10/24/in-a-first-worldwide-austrian-supreme-court-confirms-arbitral-tribunals-power-to-hold-remote-hearings-over-one-partys-objection-and-rejects-due-process-concerns/

Around the same time, the Swiss Federal Tribunal issued a decision[39] that dealt with the issue in the circumstances of a classic courtroom, not arbitration, and took a different approach when it sided with an appellant that had objected to the conduct of the main hearing via Zoom. In particular, the Swiss court ruled that concerns and restrictions surrounding the COVID-19 pandemic did not justify imposing the virtual hearings. The court based its decision on the (i) lack of any explicit rule allowing electronic means in case of the main hearings and (ii) procedural principles such as publicity of civil proceedings.[40]

In summary, there is certainly a possibility to make arguments against the use of virtual hearings, especially if both parties prefer to delay the proceedings. On the other hand, the organization and conduct of the hearing remain in the discretion of the tribunal regardless of a party's objections. If objections are raised, there is a certain room for attacking the procedural decision (depending on the possibilities under the national arbitration law) or even enforceability of the resulting award under Art. V NYC. Nevertheless, the window is small and in my opinion it may be further limited if the tribunal gives due consideration to the specific aspects of virtual hearings in order to keep the process as equal and efficient as possible. One of the ways to achieve that may be rooted in the following institutional rules and soft law tools (guidelines, template cyber protocols, check lists, etc.) prepared by arbitral institutions during the past year and a half, as described in detail in the next part of this paper.

3 Changing Attitudes Towards the Use of Virtual Hearings in Times of COVID-19

Although virtual hearings were not completely unknown to the arbitral practitioners before 2020, it was not a frequently used tool. For example, in 2018 approximately 64% of practitioners participating in the survey stated

39 Judgment of the Swiss Federal Tribunal of 6 July 2020, Case No. 146 III 194.

40 ZAUGG, N. and R. SHARIFI. Imposing Virtual Arbitration Hearings in Times of COVID-19: The Swiss Perspective. *Kluwer Arbitration Blog* [online]. 14. 1. 2021 [cit. 10. 6. 2021]. Available at: http://arbitrationblog.kluwerarbitration.com/2021/01/14/imposing-virtual-arbitration-hearings-in-times-of-covid-19-the-swiss-perspective/

that they have "never" used virtual hearings.[41] Within two years after these answers were recorded, COVID-19 has significantly changed the paradigm and when the same question[42] was posed in the 2021 survey, the amount of "nevers" shrink almost by half to only 35%.[43]

How did this shift register in practice? To provide a basic answer in this chapter, I will leave behind the *status quo* and look more closely at virtual hearing related reactions from arbitration institutions, experiences of practitioners and also some first state court case law during 2021 and the first half of 2020, i.e., "in times of COVID-19".

3.1 Arbitral Institutions: A Show of Good Reflexes

Similarly to the rest of the globe, arbitral institutions must have felt caught off guard by the rapid lock downs around the world in early 2020. For example, the ICC International Court of Arbitration ("ICC") announced in mid-March 2020, that all hearings or meetings to take place at the ICC Hearing Centre in Paris until 13 April 2020 have been postponed or cancelled[44] and similar reactions were seen from many other arbitral institutions, although they have remained operational.[45]

Nevertheless, I would say, that the arbitral institutions were very quick to recuperate. In April 2020, thirteen arbitral institutions and associations issued a joint statement that called for cooperation and collaboration but most importantly named as a priority *"ensuring that pending cases may continue*

41 See 2018 International Arbitration Survey: The Evolution of International Arbitration. School of International Arbitration. *Queen Mary University of London* [online]. 2018 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF

42 *"How often have you used [virtual hearing rooms] in an international arbitration?"*

43 See Chart 13 in 2021 International Arbitration Survey: Adapting arbitration to a changing world. *Queen Mary University of London* [online]. 2021 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

44 Urgent COVID-19 message to DRS community. *International Chamber of Commerce* [online]. 17. 3. 2020 [cit. 10. 6. 2021]. Available at: https://iccwbo.org/media-wall/news-speeches/covid-19-urgent-communication-to-drs-users-arbitrators-and-other-neutrals/

45 For a global overview see COVID-19 and the global approach to further court proceedings, hearings. *Norton Rose Fulbright* [online]. 2020 [cit. 10. 6. 2021]. Available at: https://www.nortonrosefulbright.com/en/knowledge/publications/bbfeb594/covid-19-and-the-global-approach-to-further-court-proceedings-hearings

and that parties may have their cases heard without undue delay" and requested that arbitral tribunals and parties *"mitigate the effects of any impediments to the largest extent possible while ensuring the fairness and efficiency of arbitral proceedings. In so doing, they are invited to use the full extent of our respective institutional rules and any case management techniques that may permit arbitrations to substantially progress without undue delay despite such impediments"*.[46]

Without going into any detail, the joint statement urged the tribunals to follow "institutional rules" and make use of "case management techniques" without making any reference to virtual hearings, videoconferencing or any other type of technology. This provides enough room for an individualized approach by each institution which will be the subject of further analysis. In order to narrow the field, I have chosen to focus only on five signatories of the joint statement, namely Hong Kong International Arbitration Centre ("HKIAC"), Singapore International Arbitration Centre ("SIAC"), ICC, London Court of International Arbitration ("LCIA") and Stockholm Chamber of Commerce ("SCC") (together "Arbitral Institutions").

The Arbitral Institutions are among the most popular in the international community, for example, surveys conducted in 2018 and 2021 name the Arbitral Institutions as the most "preferred" by the respondents.[47] Furthermore, for all of these institutions, 2020 was a busy year when they

46 Arbitral institutions COVID-19 joint statement. *International Chamber of Commerce* [online]. [cit. 10. 6. 2021]. Available at: https://iccwbo.org/publication/arbitral-institutions-joint-statement-in-the-wake-of-the-covid-19-outbreak/

47 See Chart 12 in 2018 International Arbitration Survey: The Evolution of International Arbitration. School of International Arbitration. *Queen Mary University of London* [online]. 2018 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF; and Chart 6 in 2021 International Arbitration Survey: Adapting arbitration to a changing world. *Queen Mary University of London* [online]. 2021 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

saw an increase in the total number of newly filed cases when compared with 2019, in many cases setting new records:

Number of newly filed international arbitration cases					
	HKIAC[48]	SIAC[49]	ICC	LCIA	SCC[50]
2019	308	479	869[51]	395[52]	175
2020	318	1080	946[53]	444[54]	213
% increase	+3,2%	+125,5%	+8,9%	+12,4%	+21,7%

Unfortunately, the so far issued statistics generally do not provide the number of hearings conducted in 2020. The exception to this is HKIAC which has reported 117 hearings in 2020, out of which 80 were held as virtual hearings[55] and some data are available also from SCC which has conducted a survey among the arbitrators, finding that out of the 61 arbitrations that had been finalized at the time of the survey, a virtual hearing had been held in 23 cases.[56] Although we do not have more comprehensive statistics, it is safe to conclude that in 2020, virtual hearings have seen an increase in usage.

Demand of any commodity warrants a response from the providers. In order to categorize reactions of the Arbitral Institutions to COVID-19, I have primarily focused on which guidelines or other soft law support were provided for the arbitrators/parties and how the institutional rules addressed virtual hearings.

48 2020 Statistics. *HKIAC* [online]. [cit. 10. 6. 2021]. Available at: https://www.hkiac.org/about-us/statistics

49 Annual report 2020. *SIAC* [online]. 2020 [cit. 10. 6. 2021]. Available at: https://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2020.pdf

50 SCC Statistics 2020. *SCC* [online]. 2020 [cit. 10. 6. 2021]. Available at: https://sccinstitute.com/statistics/

51 2019 ICC Dispute Resolution Statistics. *ICC* [online]. [cit. 10. 6. 2021]. Available at: https://iccwbo.org/publication/icc-dispute-resolution-statistics/

52 2019 Annual Case Work Report. *LCIA* [online]. [cit. 10. 6. 2021]. Available at: https://www.lcia.org/LCIA/reports.aspx

53 ICC announces record 2020 caseloads in Arbitration and ADR. *ICC* [online]. 12. 1. 2021 [cit. 10. 6. 2021]. Available at: https://iccwbo.org/media-wall/news-speeches/icc-announces-record-2020-caseloads-in-arbitration-and-adr/

54 2020 Annual Case Work Report. *LCIA* [online]. [cit. 10. 6. 2021]. Available at: https://www.lcia.org/LCIA/reports.aspx

55 2020 Statistics. *HKIAC* [online]. [cit. 10. 6. 2021]. Available at: https://www.hkiac.org/about-us/statistics

56 Virtual hearing survey. *SCC* [online]. 2020 [cit. 10. 6. 2021]. Available at: https://sccinstitute.com/media/1773182/scc-rapport_virtual_hearing-2.pdf

3.1.1 Guidelines and Other Soft Law in Support of the Virtual Hearings

Following the joint statement quoted above, the Arbitral Institutions took a variety of approaches when addressing the issue of virtual hearings, which may be summarized as follows:

HKIAC HKIAC issued relatively short guidelines[57] in May 2020. The material seems to be mostly focused on services that can be provided by the institution. Otherwise, the guidelines include basic information with several topics described in more detail, e.g., confidentiality precautions, video conferencing tips and a set-up suitable for witness participation.

The guidelines make no reference to HKIAC arbitration rules.

SIAC SIAC has taken an interesting approach by providing the guidelines (31 August 2020) as a mix of check-list and questionnaire of considerations relevant for remote arbitration in general (not only virtual hearings) *"from beginning to end"*.

The document is comprehensive in navigating parties from the legal framework of the virtual hearings (consent, applicable laws and rules) to technical details. SIAC also addresses the choice of the platform by way of listing issues to consider without naming any particular software and includes a checklist for procedural orders to be issued in relation to virtual hearings.

The guidelines seem to be generally applicable, the very few references to SIAC arbitration rules relate to confidentiality (SIAC 2016 Rules 24.4, 38 and 39)

ICC ICC acted very quickly and on 9 April 2020 issued a comprehensive guide note addressing several concerns raised by COVID-19 with the common topic of *"mitigating delays"*.

57 HKIAC guidelines for virtual hearings [online]. *HKIAC*. 2021 [cit. 10. 6. 2021]. Available at: https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/services/HKIAC%20Guidelines%20for%20Virtual%20Hearings.pdf

In contrast to other similar guidelines, ICC did not shy away from the issue of whether the ICC arbitration rules support the tribunal's decision to order virtual hearings without parties' explicit consent or over objections of a party/parties. In that regard, the guidelines do not provide a simple formula "pandemic = go online" but point out that in case of *"unwarranted and even prejudicial delay"* the tribunals should exercise the authority to establish suitable procedures.

Furthermore, the guideline note provides several interpretations, including Art. 25 para. 2 of the ICC 2017 Rules where it is suggested that wording *"shall hear the parties together in person if any of them so requests"*, may be construed as to allow for an "in person" meeting by way of virtual hearings.

LCIA

Contrary to other Arbitral Institutions, LCIA has not yet issued guidelines or any other type of soft law in relation to COVID-19 but the issue seems less pressing since (i) LCIA already had express references to videoconferencing before COVID-19 and (ii) LCIA arbitration rules were updated in 2021 in order to provide more details on several issues, including virtual hearings.

Thanks to this, the Guidance Notes from 2014 already state that tribunals *"should also consider, where appropriate, whether some or all of those who must attend any meeting or hearing might do so by video conference, rather than in person (for example, if a witness is unable to travel due to health issues)"*.

SCC

In November 2020, SCC published several arbitrator's tips regarding the virtual hearings[58] which however do not go into much detail and in comparison with materials from other Arbitral Institutions seem rather insufficient. In addition, SCC conducted its own survey regarding virtual hearings.[59]

58 SCC arbitrators' tips for a successful virtual hearing. *SCC* [online]. 2020 [cit. 10. 6. 2021]. Available at: https://sccinstitute.com/about-the-scc/news/2020/scc-arbitrators-tips-for-a-successful-virtual-hearing/

59 Virtual hearing survey. *SCC* [online]. 2020 [cit. 10. 6. 2021]. Available at: https://sccinstitute.com/media/1773182/scc-rapport_virtual_hearing-2.pdf

Instead of creating its own material, SCC points arbitrators to several other resources published Jus Mundi, Delos or IBA[60].

To sum up the above-mentioned, it is surprising how much the approaches may vary with respect to the level of detail or ambition to provide interpretation of the arbitration rules. In the long term, it will be interesting to see which approach will be considered as the most useful by the tribunals and practitioners.

3.1.2 Changes in Arbitration Rules With Respect to the Virtual Hearings

Changes in the arbitration rules do not affect the ongoing hearings but send an important signal for the future disputes. In the context of this paper, it makes sense to look (i) whether virtual hearings were in any way incorporated in the relevant rules before COVID-19 and whether (ii) there was any change to the rules during 2020 and first half of 2021 in that regard. Although the topic of virtual hearings, as a special form in which the oral hearings may (not) be conducted, is quite narrow, there are several areas of institutional rules worth looking at.

Generally, the form of oral hearings may be regulated in clauses dealing with general tribunal's power to conduct the arbitration procedure, case management conference, oral hearing, examination of witnesses or expedite or emergency procedures. After examining the relevant provisions in the rules adopted by the Arbitral Institutions up until 2020,[61] the results are a rather interesting mix. The approach of the Arbitral Institutions varies and may be summarized as follows:

SCC SCC 2017 Rules do not include any specific reference to virtual hearings (or to the use of videoconferencing, etc.), nevertheless, Art. 28 of the SCC 2017 Rules states that a case management conference may be conducted *"in person*

60 Information from the SCC relating to covid-19. *SCC* [online]. [cit. 10. 6. 2021]. Available at: https://sccinstitute.com/about-the-scc/information-from-the-scc-relating-to-covid-19/

61 I have looked at the version of the rules in force before 1 January 2020.

or by any other means" which makes certain space for virtual hearings as an alternative to a physical meetings.

SIAC Para. 7 and 8 of Schedule 1 to SIAC 2016 Rules refer to the use of videoconferencing as an *"alternative to a hearing in person"* in case of emergency arbitration.

ICC ICC 2017 Rules make a few references to virtual hearings present prior to COVID-19 in respect of the emergency proceedings[62] or case management conferences.[63]

HKIAC HKIAC 2018 Rules seem to choose the middle ground as the rules are neither entirely silent on the topic of virtual hearings, nor directly address it.

Art. 13.1 of HKIAC 2018 Rules simply requires that the arbitral tribunals take into consideration the *"effective use of technology"* when deciding on the procedure. The wording was added in 2018 among other technology-related updates.[64]

From a practical point of view this wording seems sufficient enough to also cover the use of virtual hearings in the procedure and by including it in the general clause on the conduct of the arbitration, it is easier to read it as the tribunal's discretion.

LCIA Art. 19.2 LCIA 2014 Rules lists *"video or telephone conference"* as an alternative form to in-person hearings and also allows for a *"combination of all three"*. This is the only example of general direct reference to virtual hearings before COVID-19 found among the rules used by the Arbitral Institutions. Although details vary, at least three institutional rules, SCC, SCIA and ICC, made reference to the use of virtual hearing techniques in certain situations, while not using the same wording in the general clause on oral hearings. This begs the question whether virtual hearings may be used in other circumstances or are, *a contrario*, excluded. In this regard, I agree with *Scherer's* view that such argumentation

62 See Art. 4 para. 2 Appendix V ICC 2017 Rules.

63 See Art. 24 para. 4 ICC 2017 Rules.

64 It is worth noting that HKIAC 2018 Rules also recognize use of a secured online repository as an option for delivering and storing electronic documents – See Art. 3 para. 1, Art. 3 para. 3 and Art. 3 para. 4 HKIAC 2018 Rules.

seems rather extreme, and thus nonsensical, because there is no reason why explicit references to virtual hearings in such cases should be interpreted as limitations in the remaining part of the arbitration process.[65] From my point of view, it should be added that both the emergency proceedings and case management conferences are processes that desire speed and in that context it makes sense to explicitly refer to any tool that supports this goal, including the use of remote communication. In other processes, this is less needed which explains the lack of explicit reminder to consider virtual hearings.

Out of the five Arbitral Institutions under my review, only HKIAC and LCIA already had a general framework for using virtual hearings (or at least give consideration to the technology) before COVID-19. During the past year and a half,[66] the ratio has changed only slightly thanks to ICC which has adopted a new set of rules in order to provide more solid and consistent framework for virtual hearings. Furthermore, LCIA has also made an update to its rules in this regard, adding clearer language in support of virtual hearings.

Regardless of whether the relevant rules include specific language on the topic or not, none of the Arbitral Institutions discouraged tribunals from conducting virtual hearings. In line with the wide discretions of the tribunals, it seems plausible to simply depend on provisions stating that tribunals should conduct the arbitration as they consider "appropriate" or adopt "suitable" procedural rules.[67] Nevertheless, I would suggest that in the case of virtual hearings, it is better to adopt more direct and active approach and thus encourage alternatives to the meetings in person.

4 Conclusion: Virtual Hearings Beyond the Times of COVID-19

In summary, virtual hearings can be beneficial for the time and cost efficiency of the arbitration but in order to collect these benefits, tribunals and parties

65 SCHERER, M. Chapter 4: Legal Framework of Remote Hearings. In: SCHERER, M., N. BASSIRI and M. S. A. WAHAB (eds.). *International Arbitration and the COVID-19 Revolution*. Alphen aan den Rijn: Kluwer Law International, 2020, p. 73.

66 I have looked at time frame from 1 January 2020 to 10 June 2021.

67 See Art. 13 para. 1 HKIAC 2018 Rules or Art. 23 SCC 2017 Rules.

have to give due consideration to various organization matters. A good place to start with such endeavour would be guidelines and other tools provided by arbitral institutions. In that regard, parties should be encouraged to search beyond the website of the institutions chosen to administer the arbitration. This is simply because the level of detail and quality of the materials differs. Furthermore, it might be a good practice to firstly "test" the waters by using virtual hearing room for the earlier stages of the process, typically the case management conference. Although a conference call might suffice for a discussion about scheduling, etc., by opting for a more sophisticated platforms, parties may get a better idea of possible alternatives. This might be beneficial even if they later choose to meet in person. After all, there is no guarantee that their plans will not be interrupted by closed borders or personal quarantines.

Formally, there is little to discourage parties from choosing to conduct the hearings virtually, especially if they are in agreement on such procedure. Even in cases of objections, there seems to be a forming consensus that the order to use virtual hearings as a form of oral hearings is within tribunal's discretion. In some cases, the exercise of such discretion requires consultation with the parties but in any case, it should be supported by some objective need (such as the need to avoid undue delays due to pandemic restrictions). If there are no major breaches of procedure that would cause, for example, inequality between the parties, it would be hard to challenge the award just based on the use of virtual hearings. The first case law on the matter shows that the deference to the tribunal's right to organize the process extends also to the form of oral hearings, while the contra-arguments may be avoided or do not apply in the context of arbitration.

When looking at the reaction from the Arbitral Institutions to the COVID-19 pandemic, it is good to see that the challenge was taken on relatively quickly and with pro-active and constructive approach. The Arbitral Institutions reviewed in this paper and many other around the world made effort to encourage "business as usual" by providing soft law tools but also by updating the institutional rules. This demonstrates that the Arbitral Institutions are capable of an appropriate reaction but one must ask whether that is sufficient. It should be noted that with some exceptions (LCIA and to some extent

HKIAC), the Arbitral Institutions were rather inarticulate on the topic of virtual hearings before it came into focus due to COVID-19. In that regard, it seems that the Arbitral Institutions were successful in supporting their "clients" in time of need but not as effective when it comes to motivating or creating more flexibility in the industry on their own accord.

What aspects of the newly lived experiences with virtual hearings will carry-on after COVID-19 disappears from the societies around the world? The first thing that comes to mind as an answer is "wider use of virtual hearings" but on a second thought, that seems a little bit simplistic. On one hand, it is true that many of the decision makers now have more grounds to build upon when deciding whether to use virtual hearings instead of physical meetings. Nevertheless, their experiences also include the inevitable inconveniences attached to staring into one's screen for hours and days. Still, looking into the future, I believe that the community is gradually warming-up to the idea of virtual hearings and the COVID-19 pandemic should be given credit for speeding up this process.

In the context of the ongoing debate surrounding the diversity in arbitration (or rather the lack thereof), I have lately come across an interesting quote from 2017: *"Substantial development in diversity is not something that can be forced or achieved overnight."*[68] It seems to me, that these words of wisdom could be said about the arbitration as a whole but also represent only part of the truth. Therefore, thinking about all the turmoil of 2020, I would take the liberty to rephrase: *"Substantial development in arbitration is not something that can be forced or achieved overnight. Until it is."* In my mind, this is one of the many lessons learned from COVID-19.

Literature

AGHABABYAN, A., A. HOKHOYAN and S. HABIB. Global Impact of the Pandemic on Arbitration: Enforcement and Other Implications. *Kluwer Arbitration Blog* [online]. 19. 8. 2020 [cit. 10. 6. 2021]. Available at: http://arbitrationblog.kluwerarbitration.com/2020/08/19/global-impact-of-the-pandemic-on-arbitration-enforcement-and-other-implications/

68 2021 International Arbitration Survey: Adapting arbitration to a changing world. *Queen Mary University of London* [online]. 2021 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

Annual report 2020. *SIAC* [online]. 2020 [cit. 10. 6. 2021]. Available at: https://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2020.pdf

Arbitral institutions COVID-19 joint statement. *International Chamber of Commerce* [online]. [cit. 10. 6. 2021]. Available at: https://iccwbo.org/publication/arbitral-institutions-joint-statement-in-the-wake-of-the-covid-19-outbreak/

BORN, G. *International Commercial Arbitration*. Alphen aan den Rijn: Kluwer Law International, 2020, 4250 p.

Campaign for Greener Arbitrations. *greenerarbitrations.com* [online]. 2021 [cit. 10. 6. 2021]. Available at: https://www.greenerarbitrations.com/about

COVID-19 Guidance on the implementation of the temporary restriction on non-essential travel to the EU. on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy. *European Commission* [online]. 30. 3. 2020 [cit. 10. 6. 2021]. Available at: https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-migration/20200330_c-2020-2050-report_en.pdf

COVID-19 and the global approach to further court proceedings, hearings. *Norton Rose Fulbright* [online]. 2020 [cit. 10. 6. 2021]. Available at: https://www.nortonrosefulbright.com/en/knowledge/publications/bbfeb594/covid-19-and-the-global-approach-to-further-court-proceedings-hearings

HKIAC guidelines for virtual hearings. *HKIAC* [online]. 2021 [cit. 10. 6. 2021]. Available at: https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/services/HKIAC%20Guidelines%20for%20Virtual%20Hearings.pdf

HOLTZMANN, H. and J. E. NEUHAUS. *A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary*. Alphen aan den Rijn: Kluwer Law International, 1995, 1320 p.

ICCA. Does a Right to a Physical Hearing Exist in International Arbitration? *ICCA* [online]. [cit. 10. 6. 2021]. Available at: https://www.arbitration-icca.org/right-to-a-physical-hearing-international-arbitration

ICC announces record 2020 caseloads in Arbitration and ADR. *ICC* [online]. 12. 1. 2021 [cit. 10. 6. 2021]. Available at: https://iccwbo.org/media-wall/news-speeches/icc-announces-record-2020-caseloads-in-arbitration-and-adr/

ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic. *International Chamber of Commerce* [online]. 9. 4. 2020 [cit. 10. 6. 2021]. Available at: https://library.iccwbo.org/content/dr/PRACTICE_NOTES/SNFC_0025_EN.htm?l1=Practice+Notes

Information from the SCC relating to covid-19. *SCC* [online]. [cit. 10. 6. 2021]. Available at: https://sccinstitute.com/about-the-scc/information-from-the-scc-relating-to-covid-19/

MARGHITOLA, R. *Document Production in International Arbitration*. Alphen aan den Rijn: Kluwer Law International, 2015, 336 p.

NAPPERT, S. and M. APOSTOL. Healthy Virtual Hearings. *Kluwer Arbitration Blog* [online]. 17. 7. 2020 [cit. 10. 6. 2021]. Available at: http://arbitrationblog.kluwerarbitration.com/2020/07/17/healthy-virtual-hearings/

PETSCHE, M. A. Punitive Damages in International Commercial Arbitration: Much Ado about Nothing? *The Journal of the London Court of International Arbitration*, 2013, Vol. 29, no. 1, pp. 89–104. DOI https://doi.org/10.1093/arbint/29.1.89

SACHS, K. and C. T. PRÖSTLER. Chapter 28: Time Limits in International Arbitral Proceedings. In: SHAUGHNESSY, P. L. and S. TUNG (eds.). *The Powers and Duties of an Arbitrator: Liber Amicorum Pierre A. Karrer*. Alphen aan den Rijn: Kluwer Law International, 2017, pp. 279–293.

SCC arbitrators' tips for a successful virtual hearing. *SCC* [online]. 2020 [cit. 10. 6. 2021]. Available at: https://sccinstitute.com/about-the-scc/news/2020/scc-arbitrators-tips-for-a-successful-virtual-hearing/

SCC Statistics 2020. *SCC* [online]. 2020 [cit. 10. 6. 2021]. Available at: https://sccinstitute.com/statistics/

SCHERER, M. et al. 'First' Worldwide, Austrian Supreme Court Confirms Arbitral Tribunal's Power to Hold Remote Hearings Over One Party's Objection and Rejects Due Process Concerns. *Kluwer Arbitration Blog* [online]. 24. 10. 2020 [cit. 10. 6. 2021]. Available at: http://arbitrationblog.kluwerarbitration.com/2020/10/24/in-a-first-worldwide-austrian-supreme-court-confirms-arbitral-tribunals-power-to-hold-remote-hearings-over-one-partys-objection-and-rejects-due-process-concerns/

SCHERER, M. Chapter 4: Legal Framework of Remote Hearings. In: SCHERER, M., N. BASSIRI and M. S. A. WAHAB (eds.). *International Arbitration and the COVID-19 Revolution*. Alphen aan den Rijn: Kluwer Law International, 2020, pp. 65–104.

SCHINAZI, M. The Three Ages of International Commercial Arbitration and the Development of the ICC Arbitration System. *ICC Dispute Resolution Bulletin* [online]. 2020, no. 2, pp. 63–75 [cit. 10. 6. 2021]. Available at: https://www.shearman.com/Perspectives/2020/08/The-Three-Ages-of-International-Commercial-Arbitration-and-the-Development-of-the-ICC-Arbitration

Technical Notes on Online Dispute Resolution. *UNCITRAL* [online]. 2017 [cit. 10. 6. 2021]. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

Technology Resources for Arbitration Practitioners – Virtual Arbitrations. *International Bar Association* [online]. [cit. 10. 6. 2021]. Available at: https://www.ibanet.org/technology-resources-for-arbitration-va#Content

Urgent COVID-19 message to DRS community. *International Chamber of Commerce* [online]. 17. 3. 2020 [cit. 10. 6. 2021]. Available at: https://iccwbo.org/media-wall/news-speeches/covid-19-urgent-communication-to-drs-users-arbitrators-and-other-neutrals/

Virtual hearing survey. *SCC* [online]. 2020 [cit. 10. 6. 2021]. Available at: https://sccinstitute.com/media/1773182/scc-rapport_virtual_hearing-2.pdf

WHO Statement regarding cluster of pneumonia cases in Wuhan, China. *WORLD HEALTH ORGANIZATION* [online]. 9. 1. 2020 [cit. 10. 6. 2021]. Available at: https://www.who.int/china/news/detail/09-01-2020-who-statement-regarding-cluster-of-pneumonia-cases-in-wuhan-china

ZAUGG, N. and R. SHARIFI. Imposing Virtual Arbitration Hearings in Times of COVID-19: The Swiss Perspective. *Kluwer Arbitration Blog* [online]. 14. 1. 2021 [cit. 10. 6. 2021]. Available at: http://arbitrationblog.kluwerarbitration.com/2021/01/14/imposing-virtual-arbitration-hearings-in-times-of-covid-19-the-swiss-perspective/

2018 International Arbitration Survey: The Evolution of International Arbitration. School of International Arbitration. *Queen Mary University of London* [online]. 2018 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF

2019 Annual Case Work Report. *LCIA* [online]. [cit. 10. 6. 2021]. Available at: https://www.lcia.org/LCIA/reports.aspx

2019 ICC Dispute Resolution Statistics. *ICC* [online]. [cit. 10. 6. 2021]. Available at: https://iccwbo.org/publication/icc-dispute-resolution-statistics/

2020 Annual Case Work Report. *LCIA* [online]. [cit. 10. 6. 2021]. Available at: https://www.lcia.org/LCIA/reports.aspx

2020 Statistics. *HKIAC* [online]. [cit. 10. 6. 2021]. Available at: https://www.hkiac.org/about-us/statistics

2021 International Arbitration Survey: Adapting arbitration to a changing world. *Queen Mary University of London* [online]. 2021 [cit. 10. 6. 2021]. Available at: http://www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

Contact – e-mail
becvarova@prf.cuni.cz

ORCID
0000-0002-0133-231X