

Recent Findings on Technology in International Arbitration

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How has the COVID-19 pandemic impacted international arbitration? What new technologies have been and should be implemented? These were among the topics the School of International Arbitration at Queen Mary University of London, in partnership with White & Case LLP, addressed in their 2021 international arbitration survey, *Adapting Arbitration to a Changing World*.

More than 1,200 respondents completed this twelfth edition of the online survey at the end of 2020, the most comprehensive to date. Approximately 200 respondents from 39 different countries also participated in follow-up interviews from November 2020 to March 2021.

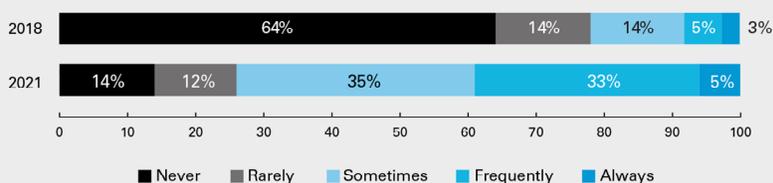
In this article, we focus on the survey's findings relating to technology. The complete survey is available on White & Case's website at <https://www.whitecase.com/publications/insight/2021-international-arbitration-survey>.

Use of Technology in International Arbitration

Since the 2018 edition of the survey, there was relatively little change in the use of most technologies in international arbitration, including videoconferencing, cloud-based storage, and hearing-related technologies such as multimedia presentations and real-time transcription.

The main exception was a significant increase in virtual hearings coinciding with the pandemic. In 2018, nearly two-thirds (64%) of respondents had "never" participated in a virtual hearing. But as the pandemic eliminated many in-person hearings, over 85% of respondents in the 2021 survey confirmed having at least some experience with virtual hearings.

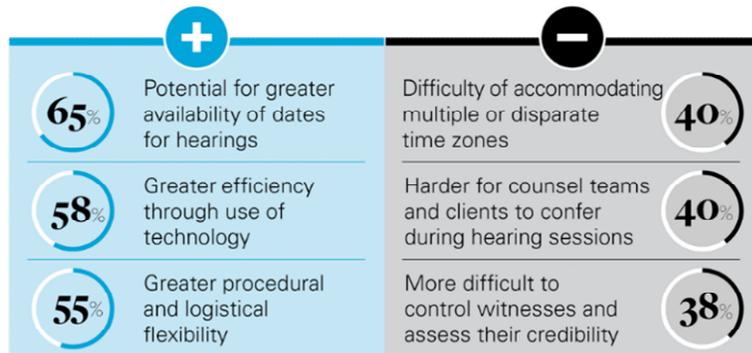
How often have you used virtual hearing rooms in international arbitration?



Advantages and Disadvantages of Virtual Hearings

The survey revealed strongly divergent views about these virtual hearings.

Many respondents noted advantages such as increased availability of hearing dates, efficiency, and procedural and logistical flexibility. Others found that virtual hearings made scheduling more difficult (e.g., due to multiple time zones) and impaired the conduct of the hearing.



Most interviewees agreed, however, that the decision whether to hold a hearing in-person or virtually should be based on what is best for the client – and that a good advocate should be able to adapt to any format.

Are Virtual Hearings Here to Stay?

The survey asked how respondents would prefer to proceed if a hearing could not be held in-person at the scheduled date. A large majority (79%) said they would rather “proceed at the scheduled time as a virtual hearing,” whereas only 16% would “postpone the hearing until it could be held in person,” and 4% would “proceed with an award on the basis of documents only.”

Another question was whether hearings and other interactions would continue to be held virtually after the pandemic. (The online survey took place in late 2020 and interviews continued through March 2021 – before the surge in the Delta variant and at a time when the development of vaccines may have raised hopes about a possible end to the pandemic.) In response to this question, a “mix of in-person and virtual” was preferred for most interactions, including arbitration community events and conferences, meetings of counsel with clients, witnesses, and experts, and even substantive hearings – although in-person was a close second choice for substantive hearings. A fully virtual format, by contrast, was narrowly preferred for procedural conferences and hearings.

Concerns About Cybersecurity

The survey also highlighted cybersecurity issues and the increasing need to address them.

Respondents were asked about their experiences with ten measures to protect the confidentiality and security of electronic data. The list of measures ranged from data encryption and access controls such as multi-factor authentication to arbitrators using secure email addresses rather than web-based email providers. For each measure, a majority of respondents indicated that they had no experience with its use in their international arbitrations – and many expressed hope that such steps would be taken to enhance cybersecurity in the future.