

UNCITRAL COLLOQUIUM ON POSSIBLE FUTURE WORK ON DISPUTE SETTLEMENT (28 MARCH - 1 APRIL 2022) NEW YORK AND ON LINE

28 March 2022:

SESSION 1 - DISPUTE RESOLUTION IN THE DIGITAL ECONOMY: MODERATED BY MS. ANNA JOUBIN-BRET, SECRETARY, UNCITRAL

Study of the Global Impact of the Covid-19 Pandemic on Commercial Dispute Resolution and Relevant Legislation – 23 Jurisdictions (Key Findings)

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1. INTRODUCTION

- ***“DISPUTE RESOLUTION INTERNATIONAL”***
 - IBA’s Journal for Contentious Committees
- **TWO ARTICLES ON THE GLOBAL IMPACT OF THE PANDEMIC ON COMMERCIAL DISPUTE RESOLUTION**
 - October 2020
 - <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=bd404ce3-3886-48a8-98f6-38eaaccd5f53>
 - May 2021
 - <https://www.ibanet.org/global-impact-covid-19-pandemic-dispute-resolution>
- **46 CONTRIBUTORS FROM 23 JURISDICTIONS**
- **REVIEWED IMPACT OF THE COVID 19 PANDEMIC ON LITIGATION, ARBITRATION & ADR**

2. THE REVIEW OF THE GLOBAL IMPACT OF THE PANDEMIC ON COMMERCIAL DISPUTE RESOLUTION

- **23 JURISDICTIONS:**

- ***Africa***: Kenya & Nigeria
- ***Asia/Pacific***: Australia, China, Hong Kong SAR, India, Indonesia, Japan, Philippines, Singapore, South Korea
- ***Europe/UK***: England & Wales, France, Germany, Russia, Sweden
- ***MENAT***: Egypt, Saudia Arabia, Turkey & United Arab Emirates
- ***North America*** : USA
- ***South America***: Argentina & Brazil

2. THE REVIEW OF THE GLOBAL IMPACT OF THE PANDEMIC ON COMMERCIAL DISPUTE RESOLUTION (CONT'D)

- **MARKED CONTRASTS AMONG JURISDICTIONS**
 - Openness to Innovation
 - Capacity to Rapidly Adapt
 - Financial, Technological and Human Resources
 - Flexibility of Legal Framework and Culture

3. THE TRENDS

- **PANDEMIC HAS LED TO DEVELOPMENT & ACCELERATED USE IN ALL FORMS OF DISPUTE RESOLUTION OF ADVANCED DIGITAL TECHNOLOGY** including for:
 - Filing of Cases & Communications
 - Submission, Storage, Review and Exchange of Documents (submissions and evidence)
 - Research
 - Case Management
 - Remote Hearings (inc. on line platforms, transcription and translation)
 - Final Decisions (Judgments and Awards)

3. THE TRENDS

- **INNOVATION**

- ***Digital Technology*** *eg*

- Block Chain – Case Management
- Auto-transcription
- Document management and automated docketing
- Cloud storage
- Inferential artificial intelligence
- Natural language processing and visual perception tools
- Autonomous decision-making / acts caused by algorithms without human intervention (“**ADM**”)

- ***Flexible Scheduling***

- ***Costs***

3. THE TRENDS

- **DEVELOPMENT OF PRACTICE NOTES AND GUIDELINES**
 - Procedural Fairness
 - Efficiency
 - Cyber Security
 - Data Privacy and Confidentiality
 - Logistics

- **INCREASING REGULATION**
 - National and provincial level
 - Political and economic unions of States

3. THE TRENDS (CONT'D)

- **TEMPORARY LEGISLATION** inc re:
 - Use of On Line Platforms/Remote Hearings
 - Use of Alternative Dispute Resolution
 - Public Health/Quarantine/Border Controls/Social Distancing
 - Suspension of Time Limits, Payment Obligations & Insolvency Triggers
- **PERMANENT** inc re:
 - On Line Courts
 - On Line Platforms
 - Data Access, Use and Transfer (including cross border)
 - Cyber security
 - Use of Artificial Intelligence

4. ISSUES

- **VARIABLE CAPACITY OF JURISDICTIONS TO INNOVATE**
- **ACCESS TO, USE & TRANSFER OF DATA**
- **INCONSISTENT LEGAL FRAMEWORKS & PRACTICES**
 - CONFLICTS OF LAW
 - FAIRNESS
 - EFFICIENCY
- **CYBER SECURITY**
- **NEW CAUSES OF ACTION**
- **NEW FORMS/COMBINATIONS OF DISPUTE RESOLUTION**
- **IMPACT OF AUTOMATED DECISION MAKING**
- **COSTS**
- **UNEQUAL ACCESS TO RESOURCES/ACCESS TO JUSTICE**
- **EFFECTIVENESS OF CURRENT INTERNATIONAL LEGAL FRAMEWORK**

5. HARMONIZED LEGAL STANDARDS AND CONTENTS?

- **ARBITRABILITY, JURISDICTION AND ARBITRATION AGREEMENTS**
- **FAIRNESS AND PROCEDURAL STANDARDS** e.g. re:
 - Authentication
 - Transparency & Disclosure
 - Equality of Treatment
 - Rights of Affected Third Parties
 - New forms /combinations of Dispute Resolution
 - Enforcement
- **DATA ACCESS, USE AND TRANSFERS**
- **DIGITAL TECHNOLOGY USE & STANDARDS, INCLUDING CYBERSECURITY & LIABILITY**
- **AUTOMATED DECISION MAKING**
- **ACCESS TO JUSTICE**