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International Arbitration and the COVID-19 Pandemic: Where are we today and where are we going?

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INTRODUCTION

- The questions for today:
 - How has the practice of international arbitration adapted to the COVID-19 pandemic?
 - What will be the lasting impact of the COVID-19 pandemic on international arbitration?
- The COVID-19 pandemic has primarily affected two aspects of international arbitration:
 - The preparation and conduct of hearings
 - The documentary record of the arbitration

THE PREPARATION AND CONDUCT OF HEARINGS

- Four main types of oral hearings in international arbitration:
 - Case management conferences
 - Oral submissions on procedural matters
 - Oral opening statements and closing arguments
 - Witness hearings
- The COVID-19 pandemic has had a different impact on these different types of oral hearings

THE PREPARATION AND CONDUCT OF HEARINGS (2)

- For case management conferences, procedural hearings, and oral openings and closings:
 - Relatively smooth transition from in-person hearings to virtual hearings
 - The COVID-19 pandemic will likely result in a permanent and significant shift towards virtual hearings for such matters
 - *One Important Caveat:* The need for access to reliable high-speed internet and the equal treatment of the parties

THE PREPARATION AND CONDUCT OF HEARINGS (3)

- For the preparation of witness hearings, the impact of the COVID-19 pandemic has been mixed:
 - We have learned that the initial phases of witness interviews and preparation can be done effectively and efficiently in a virtual format
 - But proper witness preparation leading up to the witness hearing involves important human dynamics that do not lend themselves to virtual exchanges

THE PREPARATION AND CONDUCT OF HEARINGS (4)

- For the conduct of witness hearings, the virtual format has worked better than expected, but the lasting impact of the COVID-19 pandemic is likely to be limited:
 - The experience of virtual hearings has generally been positive, but there are challenges and shortcomings
 - After the COVID-19 pandemic, counsel and arbitrators will be more open to conducting all or a part of witness hearings in a virtual format
 - But most counsel and arbitrators will wish to revert to in-person witness hearings whenever possible in the future

THE DOCUMENTARY RECORD OF THE ARBITRATION

- Over the last twenty years, there was relatively slow progress towards the paperless electronic record
- With the COVID-19 pandemic, the shift to paperless international arbitration has accelerated dramatically
- Paperless electronic records are here to stay and international arbitration practitioners must embrace this development

THE LASTING EFFECTS OF THE COVID-19 PANDEMIC

- While a terrible human tragedy, the COVID-19 pandemic will have certain positive lasting effects on the practice of international arbitration:
 - We will be more thoughtful about when travel is necessary
 - We will move to the exclusive use of electronic arbitration records
- The international arbitration community's response to the COVID-19 pandemic is encouraging and confirms:
 - The resilience of international arbitration
 - Our capacity for continuous self-assessment and innovation



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