

## President's Message

### The Times They Are A-Changin' (Fine – But How Much and For How Long, Exactly? And What Does It All Mean For Us?)

When I first thought about how I could possibly approach the traditional President's Message, I shortly considered putting each Message under the deliberately chosen title of a rock song and take it up from there. After all, who is not primarily interested in sex, drugs and rock 'n' roll? A few appropriate songs immediately came to mind. Well, not this one, not even assuming a generous definition of rock 'n' roll. A few months later, and having long suppressed the inapposite urge to mix rock music and arbitration, I remembered this Dylan song that quite a few years ago I used to play and sing to my children (*read*: tried to play and sing). Today, it is a no-brainer. The times are definitely changing for the world and also for the arbitration community. If you do not believe it, just check out your frequent flyer account – assuming the relevant airline still exists by the time you read this.

In April, the Economist hung a “Closed” sign in front of the Earth on one of its covers. That was slightly exaggerated, of course. The Earth is not shut down; flora and fauna may actually enjoy the human lockdown even if reports of dolphins frolicking in the canals of a Venice wiped free of tourists are fake news. The arbitration world is not shut down either. There may well be more cases as a consequence of the current economic turbulence.

What have shut down, however, are evidentiary hearings. Some arbitration hearings, having suddenly been torpedoed by travel restrictions, simply continued on-line after everybody had reached their home base. Of course, hearing and seeing a witness on a monitor is not the same as having a real person sitting opposite. “Reading the room” does not work well on-line. The palpable unease of a witness starting to sweat in a well-air-conditioned room and furtively shuffling his or her feet under the table is easily lost on a screen. And just try to captivate a tribunal with a two-hour opening statement on a monitor. It is hard enough when sitting in the same room when even sometimes managing to make eye contact. Even the integrity of the proceedings as such is at stake.

I admit I always was against evidentiary hearings via video conference. Current circumstances are brushing aside many of my concerns. It remains for parties and their counsel to cooperate with the tribunals in good faith to define suitable protocols and not to seek opportunities for obstruction. I know this goes against the grain of many arbitration practitioners, but maybe not of the best and most successful and recognized ones. The need to cooperate and thereby

implement the initial agreement of the parties to arbitrate any dispute in good faith might separate wheat from chaff among counsel as well as arbitrators.

We are witnessing a move from in-person hearings to on-line hearings. Is it temporary? I am not sure. Even once legal and psychological travel restrictions have eased up, we, and in particular the users of arbitration among us, may have become accustomed to on-line hearings. We may even sometimes prefer them, if only to save time and costs – the notorious twin banes of international arbitration, for which we, the arbitration community, counsel and arbitrators alike, bear most of the responsibility.

The “Closed” sign befits, however, the conference business. Before, a constant complaint was the glut of arbitration conferences. We all could have spent our time hopping from one international arbitration conference to the next while still missing at least half of them. That was then. The conference business has come to a screeching halt. Will it ever recover? Will it even make up for the lost conferences of this year (and maybe those of 2021)? Will panel discussions wander to webinars and networking events to social media? Earlier this year, a Swiss-Korean arbitration boutique celebrated its inauguration via a skype meeting, with everybody raising glasses, bottles, or cups in front of their screens. It apparently worked well under the circumstances, but is that the future? And if so, should we panic?

Never let a good crisis go to waste, as somebody (although probably not Churchill) once said. This is a time to think, for all of us and, of course, for ASA. It is a time to reconsider what ASA is standing for and how ASA can cater to a future arbitration world with or without a constant threat of infection. As I indicated in my last, pre-Corona President's Message, the ASA Board started a brainstorming process about ASA's mission in early February. The Covid-19 outbreak merely emphasized the “storm” in brainstorming. That process is well underway. Do not expect miracles from ASA, though. The philosophers' stone is really just a myth.

When times are a-changin', trial and error is the time-honored method of choice. All of us need to try – and to exchange our experiences and listen to the users when doing so. We, the arbitration community, are in this hole together. We need to cooperate to climb out and be ready to serve the needs of the users that are confronted with the fall-out of the economic lockdown and may need our services more than ever. The arbitration world will likely be different this and next year and maybe thereafter. Not necessarily worse, just different. We have to keep an open mind and adapt, that's all.

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