

President's Message

Climate Change – Practice Change?

Looking for boring and slightly esoteric conferences? Then you are probably not a regular at ASA conferences – and you definitely did not want to attend the recent winter conference on "*ESG and disputes: flash in the pan or game changer?*". The focus of the conference was on climate change disputes and the impact of climate change on arbitration. If ever there was a topic that concerned us all, this is it. The timing of the conference was also perfect. Only two days before the conference began the first climate-change related case in Switzerland against a private company was filed and covered by the international press.

As commercial lawyers, cases for us are usually about money flowing (or not flowing) from one company to another. The climate issue, however, concerns us all, not just as lawyers, but also as private persons and, not least, as parents of children who might be wondering what kind of world they will be living in. What is our role in a world that is changing around us? What can we contribute to solve the increasing number of disputes that involve fundamental moral questions and carry high emotions? And, by contributing, are we on the right side anyway?

Commercial disputes can be emotional, but from the outside it is still just one company pitted against another. That said, in investor-state disputes some critics have taken to the street to voice moral disapproval of investor claimants. Now we are witnessing a similar development in climate change cases. Will it be reprehensible for a lawyer to represent a greenhouse-gas emitting company? From a professional standpoint there is no right or wrong side – all parties to a dispute are entitled to counsel – but the public may see it differently.

It is obvious that there will be more and more climate *litigation*, driven by NGOs that are deeply concerned about the insufficiency of political action against climate change.¹

Will there also be more climate *arbitration*? Climate-related issues are already quite common in investor-state disputes, but still much less so in commercial arbitration. Will it change? Panellists pointed out several

¹ See, e.g., the global overview over climate litigation cases by the Sabin Center for Climate Change Law at Columbia Law School, currently listing 1546 US cases and 674 non-US cases (<http://climatecasechart.com/non-us-climate-change-litigation/>, 16 February 2023).

scenarios in which arbitration could play a substantial role. The conference also helped to bring attendees up to speed.

The conference also explored to what extent we as practitioners have a responsibility to reduce CO₂ emissions and how we should go about it. One thing is clear: the days of endless hearings with dozens of witnesses and experts flying in from all over the world for some marginal testimony on a side issue should be gone. Less is more. What was simply inefficient and unnecessary in the past and impossible during the pandemic, is indefensible today. Granted, video testimony is highly disputed, rightly or wrongly, but often only a few witnesses are critical.

Same for the two rows of lawyers on each side. Most of them likely cannot contribute much of substance anyway.

The same goes for printing. We do not need to print tens of thousands of pages and send them all over the world to dozens of recipients so they can immediately be put in storage for the next 10 years. I like paper, but I'm happy to print what I need and in the most efficient printing format that works for me.

Personal contact is still crucial, though. There continues to be a need for in-person conferences, as the continued success of the ASA conferences demonstrates. At our last conference, we had more than 250 people in the room and only about a dozen online participants. Conferences are about sharing information and insights, but also about meeting and chatting. Webinars are great, but they have obvious limits. Taking the train, not the plane, to a near-by conference is sustainable. For more suggestions, you might wish to consult the Green Pledge.²

In sum, climate change is impacting our professional and private lives in various ways and we all must make time to consider how best to account for it.

FELIX DASSER

² The Green Pledge, <https://www.greenerarbitrations.com/greenpledge>.