

# BUILDING A SUSTAINABLE FUTURE IN INTERNATIONAL COMMERCIAL ARBITRATION:

The Center for Arbitration and  
Conciliation of the Bogota  
Chamber of Commerce at the  
forefront of Green International  
Arbitration



CAMPAIGN FOR  
**GREENER  
ARBITRATIONS**  
SIGNATORY

Center for Arbitration  
and Conciliation



**BUILDING A SUSTAINABLE FUTURE IN INTERNATIONAL COMMERCIAL ARBITRATION: The Center for Arbitration and Conciliation of the Bogota Chamber of Commerce at the forefront of Green International Arbitration**

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# Chapter I.



## 1. GREEN INTERNATIONAL ARBITRATION

### a. ¿En qué consiste el Arbitraje Internacional Verde?

#### a. What is Green International Arbitration?

Currently, some of the most relevant issues of international arbitration are mediated by one of the greatest challenges of our era: achieving environmental sustainability. On this basis, the topic of Green [International] Arbitration, an initiative aimed at reducing the environmental impact of international arbitration on the planet, has gained particular relevance. To achieve this goal, different actors of international arbitration have proposed a series of principles, protocols and agreements in order to transform the arbitral practice around the world, following international standards and parameters for environmental sustainability and carbon footprint reduction. Specific actions include reducing energy consumption in workspaces; replacing physical documentation with electronic correspondence; promoting remote videoconferencing instead of physical hearings; minimizing unnecessary travel of witnesses and experts; and promoting the adoption of protocols and arbitration agreements aimed at reducing environmental costs in international arbitration proceedings.

## **b. Where does Green International Arbitration come from?**

The environmental footprint of international arbitration proceedings in the world is important. A single international arbitration proceeding could require, according to some commentators, up to 20,000 trees to be environmentally compensated-almost an entire "Central Park"-. To respond to this discouraging panorama, several protocols and movements emerged in 2019, such as the initiatives taken by the European Commission to Modernize Justice Systems in the European Union in 2020 and, in international arbitration, the creation of the Campaign for Greener Arbitrations in 2019, as well as the Chancery Lane Project. These initiatives have the common objective of issuing protocols, model clauses and agreements for the promotion of a more sustainable practice in international arbitration. Among these are the Green Protocol for Arbitral Proceedings and the Model Green Procedural Order, instruments that have been adopted by several arbitral institutions and law firms around the world.

Certainly, before the creation of these movements, proposals to reduce the environmental impact in international arbitration had already been implemented. For instance, in the second half of 2017, the Center for Arbitration and Conciliation of the Bogota Chamber of Commerce ("the Center"), adopted a new platform for the management of digital files and a new model of a sustainable procedural order number 1, in hand with other international arbitral institutions, which also made adjustments to their technology for conducting virtual hearings.

## **c. How has Green International Arbitration impacted international practice?**

The subscription of the Green Pledge constitutes the main instrument through which the actors of international arbitration have assumed commitments regarding environmental sustainability. More than 500 law firms, arbitral institutions, companies and individuals have signed this Pledge, advocating for the reduction of the carbon footprint generated by international arbitration proceedings. The replacement of in person hearings by virtual hearings, on the one hand, and the adoption of model procedural orders and green arbitration clauses, on the other, have positively impacted this matter. In the field of law firms, for example, setting zero-carbon targets by 2030 is a promise that multiple law firms are working on.

Arbitral institutions have certainly not been left behind. The adoption of Green International Arbitration policies has been a reality in recent years. The Procedural Rules of the Center (hereinafter "the Rules") contain numerous

references to the use of electronic means both for the handling of documents and for the conduct of virtual hearings <https://chancerylaneproject.org>. For instance, Article 3.2 gives full effect to electronic notices as well as to digital communications and memorandums submitted by the parties. Likewise, Article

3.21 empowers tribunals to conduct virtual hearings- including the evidentiary hearing- unless otherwise agreed by the parties. The foregoing constitutes a considerable improvement over other rules that do not expressly mention the virtuality as an option for this type of hearings. The references to the presentation of digital documents and the conduct of virtual hearings are, likewise, present in other institutional rules such as in the Rules of the International Court of Arbitration of London- LCIA-, the Rules of the International Chamber of Commerce- ICC- and the Rules of the Hong Kong International Arbitration Centre-HKIAC-.

Green International Arbitration has had a considerable impact on the practice of the parties and their representatives. According to multiple surveys, such as the 2021 International Arbitration Survey: Adapting arbitration to a changing world, 55% of the interviewees said they had evidenced the primacy in the production of electronic documents over physical documents. 53% of them said they preferred virtual procedural hearings over in-person hearings. 51% of them said they had experienced evidentiary hearings in virtual format without hesitation. Furthermore, these initiatives have also impacted contractual drafting for lawyers and companies, as they propose models for the inclusion of arbitration agreements in contracts in accordance with the principles of sustainability and reduction of the environmental impact of international arbitration.

# Chapter II.



## REGULATORY FRAMEWORK FOR GREEN INTERNATIONAL ARBITRATION

### a. International regulatory context for States

Most of the international instruments that have an impact on the expansion of Green International Arbitration belong to soft law. Nonetheless, some of the foundations of this movement are found in international instruments binding for States, where concerns about the systematic reduction of the carbon footprint have been reflected in a general context. To begin, the [United Nations Framework Convention on Climate Change](#) is notable for compelling States to recognize and stabilize the concentrations of greenhouse gases- GHG- in the atmosphere, including CO2 emissions from any activity, such as international arbitration.

On the other hand, the [Vienna Convention for the Protection of the Ozone Layer](#), which considers CO2 a chemical with the potential to modify the chemical and physical properties of the ozone layer, compels States to reduce its emissions progressively. In addition, the recommendations and guidelines of the United Nations to combat climate change and the Paris Agreement enforce States to submit their own national adaptation plans to respond to climate change. In order to achieve these objectives, some international organizations, such as the European Union, have proposed regulations for the transformation and administration of digital justice systems, following the path taken by arbitral institutions

### b. Green International Arbitration regulation and soft law instruments

The most prominent initiatives of Green International Arbitration are the [Campaign for Greener Arbitration](#) and the [Chancery Lane Project](#). In particular, the Campaign for Greener Arbitration encourages lawyers, arbitral institutions and parties to international arbitration to commit to the [Guiding Principles](#) and to adopt a series of protocols to promote a better environmental behavior within arbitral proceedings. The principles governing this campaign include:

- i. Creating a work space with a reduced environmental footprint by seeking for opportunities to reduce energy consumption and waste;
- ii. Corresponding electronically, unless hard copy correspondence is expressly needed, while also acknowledging that email has a carbon footprint;
- iii. Encouraging the use of videoconferencing facilities as an alternative to travel;
- iv. Avoiding printing, requesting the use of electronic instead of hard copies of documents and promoting the use of electronic bundles at hearings;
- v. Using suppliers and service providers who are committed to reducing their environmental footprint;
- vi. Considering and/or suggesting, where appropriate, that witnesses and experts give evidence through videoconferencing facilities, rather than attend hearings in person;
- vii. Avoiding unnecessary travel and using videoconferencing facilities as an alternative;
- viii. Considering and questioning the need to fly at all times and offsetting carbon emissions for any arbitration-related travel.

Among the protocols signed in the framework of this campaign are the [Green Protocol for Arbitral Proceedings](#), the [Model Green Procedural Order](#), the [Green Protocol for Law Firms, Chambers and Legal Service Providers working in arbitration](#), the [Green Protocol for Arbitrators](#), the [Green Protocol for Arbitration Conferences](#) and the [Green Protocol for Arbitral Institutions](#). These protocols promote the adoption of sustainable measures during international arbitration proceedings, the utilization of communication and correspondence between the parties and the tribunal by electronic means, the use of electronic platforms for the conduct of hearings and the transfer of documents and, if absolutely necessary, the printing of physical documents under certain parameters of environmental sustainability.

Regarding arbitral institutions and law firms specifically, the Green Protocol for Law Firms, Chambers and Legal Service Providers working in arbitration and the Green Protocol for Arbitral Institutions enshrine the commitment of such actors to 1) use clean energy, 2) reduce energy consumption, 3) digitize their platforms, 4) minimize document printing and paper use, 5) promote recycling, 6) limit the use of plastic, 7) partner with green organizations, 8) travel responsibly, 9) encourage workers to adopt sustainable behavior, 10) promote social responsibility, 11) reduce carbon emissions and 12) report progress.

The Greener Arbitration Campaign also launched the Green Procedural Order Model in

2021, which contains several elements already foreseen in the Procedural Order Model used by the Center since the second half of 2017, as shown in the following table:

|                  | Model Green Procedural Order (2021)   | Model Procedural Order of the Center (2017)   |
|------------------|---|---|
| <b>E-mail</b>    | All communications and correspondence between the Parties, the Tribunal and the administering institutions shall be made by electronic means, unless otherwise required by institutional rules or express contractual provisions.   | Any written communication to the members of the Tribunal, to the Secretariat and to the representatives of the Parties shall be sent by e-mail.   |
| <b>Documents</b> | All written submissions, including memorandums, requests, witness statements, expert reports, evidence and judicial authorities, shall be prepared, notified and made available to the other Party (s) and to the Tribunal electronically (...). The Parties shall avoid using and distributing USB keys, unless strictly necessary. (...)<br>Electronic versions of documents contained in the file will be shared in an agreed form (e.g., word-searchable PDFs) and organized in an agreed structure (e.g., document-separated PDFs), to ensure consistency, ease of use and compatibility between the different systems that may be used by the Parties and the Tribunal. | All submissions, documentary evidence and other communications by the Parties shall be submitted exclusively in electronic form -with a search option for terms and preferably in PDF format -by e-mail, either in attached files or in downloadable files from a remote server, via a digital access link.<br><br>In order to ensure the integrity and proper preservation of the file of this arbitration, such file shall only contain documentation received by the Center, by e-mail and on the due occasions provided for in this Procedural Order. |
| <b>Hearings</b>  | Pre-hearing conferences, procedural hearings and substantive hearings shall be conducted remotely, by audio or by videoconference, unless it is impracticable or inappropriate and the Parties and the Tribunal agree.  | The hearing shall be conducted in a virtual manner. The Parties expressly agree that the use of videoconferencing as a means of conducting the hearing does not infringe the right to due process of either Party, and that none of them will seek to set aside the   |

|                     |   |   |
|---------------------|---|---|
|                     |   | arbitral award resulting from this arbitration on the basis that the hearing was conducted by videoconference.  |
| <b>Share screen</b> | Use of electronic documents: Wherever possible, shall be projected onto a screen or otherwise be viewable electronically by each participant at their own command and electronic copies thereof shall be distributed reasonably in advance. | The Parties shall use the "screen-sharing" function to share evidence during the examination of witnesses and experts. Physical documents shall not be used and shall not be made available to any witness or expert. |

Likewise, the Rules and the guidelines for the development of the Center's virtual hearings also remain within the parameters contained in these instruments. The Center's [Practice Note No. 4](#) refers to the procedural stages contemplated by these protocols and develops them in a similar way: general guidelines, pre-hearing stage, logistical tests, development of the hearing, witness and expert examination and transcription service. Similarly, the Rules accept and regulate digital communications and documents in the context of international arbitration proceedings, adopting a very similar wording to that contained in the above-mentioned Model Green Procedural Order.

On the other hand, the Chancery Lane Project has a vision of a world in which, in the words of some commentators, "every contract and every law allows solutions to climate change". In order to reduce the carbon footprint produced by international arbitration and commercial transactions in general, this initiative proposes 71 model clauses, 47 definitions for the drafting of sustainable contracts and 10 model laws to inspire lawyers and legislators in this work. Among the clauses proposed by this movement are the [Low Carbon Arbitration Hearings clause](#), the [Avoiding Excessive Paper in Dispute Resolution clause](#) and the [Choice of Green Governing Law clause](#). The latter is an innovation in Green International Arbitration, as it does not focus on traditional issues, but gives the parties the opportunity to consciously choose environmentally friendly applicable laws and incorporate green principles and regulations into their clauses. In order to facilitate the adoption of these clauses, this initiative offers two [Green Litigation and Arbitration Protocols](#).

### c. Regulation in Colombia

Although there is no set of regulations in Colombia specifically governing the subject matter of Green International Arbitration (or green justice), there are a number of local regulations, on a par with international instruments, that promote the protection of the environment, and require individuals and the State to minimize CO2 emissions and to use alternative energy sources if necessary. Naturally, the Constitution enshrines the

right of all citizens to a healthy environment and understands the environment as a common heritage that obliges the State to ensure sustainable development in Colombia<sup>1</sup>. Besides, the President of the Republic has issued a number of decrees aimed at protecting the atmosphere from CO2 pollution, forcing individuals to constantly report their emissions and reduce them as much as possible in order to protect the environment as a fundamental right<sup>2</sup>.

Regarding initiatives related to the digitization of justice and the idea of zero paper outside the international arbitration, the high courts in Colombia have promoted the [Plan for the Digitization of Judicial Branch Records](#). As to the foreign investment in this area, this year, the *Conpes* authorized the request for an external public credit operation with multilateral banks to finance the Program for the Transformation of Justice in Colombia- Phase I, in accordance with Law 270 of 1996 and the directives of the Constitutional Court for the promotion of the use of digital technologies in judicial proceedings.

#### **i. Green International Arbitration at the Center**

The regulations, programs and recommendations mentioned above have found synchrony in the arbitral institutions that had already advanced an important path in this area.

The Code of Ethics and Good Governance of the Bogotá Chamber of Commerce, for instance, states:

*"[... ] c). Social Responsibility: The Bogota Chamber of Commerce constantly seeks social, business and community improvement as well as the improvement of the quality of life of Bogota and its region and the defense of the environment.*

*d). Shared value: The actions of the Bogota Chamber of Commerce will be directed to the maximization of the profits of the companies from the generation of economic, social and environmental value in the communities in which the companies operate"*

In line with the above, Article 3.1 of the Rules provide that the arbitration agreement is valid even if it is in electronic form. Article 3.2 provides that all notifications or communications may be sent electronically, giving them full validity. Likewise, Article 3.21 empowers the Tribunal and the parties to hold hearings by videoconference and the Tribunal to conduct the proceedings in a manner it deems appropriate, by which it may order the use of information storage systems that produce less waste and are more sustainable.

Precisely, with the purpose of facilitating the realization of virtual hearings in international arbitration, the Center issued [Practice Note No. 4](#) as a guide for the conduct and promotion of virtual hearings in these proceedings, under current

<sup>1</sup> See Arts. 8, 58, 63, 79 and 95, Colombian Constitution, 1991.

<sup>2</sup> See Decree 2811, 1974 (considers the atmosphere as a renewable natural resource, capable of being protected by the State); Decree 02, 1982 (refers to the obligation to prevent air pollution); Decree 948, 1995; (refers to the obligation to protect air quality of, inter alia, GHG such as CO2); Resolution 1352, 1995 (refers to the obligation to report on GHG emissions); Resolution 1447, 2018 (regulates the System for Monitoring, Reporting and Verification of National Mitigation Actions for the Reduction of GHG Emissions).

international standards for the protection of the right to due process of the parties. This practice note contains the basic guidelines for virtual hearings in international arbitration, including the platform on which they are held, the participants who are allowed, the pre-hearing stage, the logistical and connection tests, the dynamics to be managed during the hearing and the complementary services offered by the Center. In this regard, the Center has also issued a series of circulars for international arbitral tribunals and parties on the pandemic, but not restricted to it, to complement the regulation on virtual hearings and the handling of electronic documents<sup>3</sup>.

The Center's [SIMASC](#) platform nowadays holds all authentic files of international arbitration proceedings exclusively electronically by removing the physical version of such records. In short, the Center as a Colombian arbitral institution has made every effort to implement the principles of environmental sustainability within the international arbitration proceedings that it administers since long before the pandemic, handling fully virtual files, adopting a green procedural order and enabling international arbitral tribunals to conduct virtual hearings and handle documents and notices by virtual means. On this basis, and in order to have a comprehensive perspective on Green International Arbitration, such theme should be analyzed from the perspective of the parties involved in international arbitration proceedings, namely, companies.

<sup>3</sup> See Circulars 003 and 004 of 20 March 2020 and Directive 001 of 2021. Retrieved from: <https://www.ccb.org.co/Sala-de-prensa/Noticias-CCB/2020/Marzo-2020/EI-CAC-continua-prestando-sus-servicios-de-manera-virtual>

# Chapter III



## GREEN INTERNATIONAL ARBITRATION IN PRACTICE

### a. Green International Arbitration for companies: Do they choose international arbitration in light of their corporate social responsibility environmental policies?

Companies embody one of the most important actors in international arbitration. Good practices in arbitral institutions, international arbitral tribunals and party representatives only made sense if companies chose international arbitration as an alternative mechanism for resolving their disputes. Indeed, there are numerous companies (Colombian and foreign) that choose the [international arbitration of the Center](#) for reasons of speed, economy, confidentiality and specialty. However, the question of whether companies chose international arbitration as a way of materializing their corporate social responsibility environmental policies has constantly arisen.

Most companies in Colombia that have corporate social responsibility environmental policies focus on mitigating the environmental impact of their decisions and activities<sup>4</sup>. Although these programs tend to focus on the environmental control of the company's practice (such as reducing the carbon footprint produced by its own activities and using alternative sources of energy), the choice of international arbitration as an alternative dispute resolution mechanism is also an effective way to implement these corporate social responsibility environmental policies, and could constitute an additional motivation for the inclusion of arbitration agreements in their contracts.

First, choosing international arbitration over ordinary jurisdiction already represents a significant environmental advance: the efficiency of the former over the latter translates

<sup>4</sup> See the Survey of Strategic Social Architecture of the National Association of Entrepreneurs of Colombia- ANDI-, in which the Colombian companies interviewed concentrate most of their programs to mitigate the impacts of their decisions and activities in the environmental area, with a 64% over other areas such as education, humanitarian aid, art, health, infrastructure and habitat.

into less environmental and energy expenditure, as well as in the reduction of the number of actors involved in the proceedings. In addition, if an arbitral institution is chosen that is committed to Green International Arbitration, such as the Center, the picture is even more promising; the environmental costs generated by in-person hearings are significantly reduced, as well as the carbon footprint generated by the use of physical files and the in-person work.

#### **i. Good Practice Guide for companies: Do's and Don'ts**

Choosing international arbitration is a first step in promoting sustainability in the area of dispute resolution for companies. Now, in the scenario in which companies choose international arbitration as a way to resolve their disputes for environmental reasons, how can they move towards a sustainable international arbitration proceeding in their practice? Companies that participate in an international arbitration proceeding can implement a series of practices to make it greener, among which are recommended:

- i. In the context of the production of documents, to handle them solely by electronic means and mechanisms. It is recommended to digitize all documents related to the arbitration proceeding and have them either on the company's own platform or download them for its offline access. It is encouraged that companies upload as few subfolders as possible, opting for compiled and unified documents.
- ii. To reuse company technology and, if necessary, acquire equipment only from sustainable companies. For the use of technology, it is suggested to conduct meetings purely remotely, only when necessary and efficiently.
- iii. To instruct party representatives and workers in the company to conduct arbitration proceedings as green as possible, opting for the most sustainable options within it<sup>5</sup>.

With the implementation of these recommendations, companies that choose international arbitration will be able to conduct international arbitration proceedings that are much more sustainable, efficient and fast, complying with their corporate social responsibility environmental policies and expanding the practice of Green International Arbitration around the world.

In summary, Green International Arbitration is expanding and is here to stay. The Center of the Bogota Chamber of Commerce, aware of its responsibility as a leading arbitral institution in international arbitration, is at the forefront in sustainable international practices and in the undeniable task of continuing to promote its international services as the most environmentally friendly institution. The signing of the Green Pledge is another step forward in the path of concrete actions in responsibility with the planet and the region, a task which the arbitral institution of the Americas, as a pioneer, will always be devoted to.

<sup>5</sup> These recommendations take some elements from the 2020 Guide to Good Practice for the Sustainable Use of ICT. Retrieved from: <https://oficinaverdeurjc.files.wordpress.com/2020/11/guia-buenas-practicas-uso-tic-2ed.pdf>

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