

## Preparing for an International Arbitration Hearing

*By Heather Van Slooten*

International arbitrations typically involve the interaction of witnesses, attorneys, and arbitrators from different countries and legal systems. Arbitration hearings do not take place in a courthouse with its accompanying support staff and facilities. They often are held in countries where the attorneys may not have offices. These factors often require hearings preparations for international arbitration in addition to those required in domestic court trials. These preparations may be critical to the smooth functioning of hearings and even to the outcome of cases.

### Witness Preparation

**1. Obtain the necessary travel documents.** As early as possible before hearings, ensure that any potential witnesses and local counsel have the passports and visas necessary to travel to the country where arbitration will be held. For example, the U.S. Department of State's Web site, [www.state.gov](http://www.state.gov), is useful for determining what is necessary for travel to the United States. Have a member of your staff book hotel reservations and organize transportation for witnesses who have not before traveled to the country where arbitration will be held.

**2. Hire translators.** Because witnesses are often from several different countries, they may not speak the language in which arbitration is being conducted well enough to testify in that language. Testifying before any court or tribunal can be daunting for any witness, and testifying through a translator is particularly difficult. Therefore, to prepare a witness for hearings, it is extremely beneficial to conduct mock examinations with a translator who provides simultaneous, literal translations that mimic hearing conditions as closely as possible.

**3. Prepare witness materials.** Before meeting with witnesses, familiarize them with all relevant documents, including witness declarations, excerpts from parties' written submissions to which witnesses may be asked to testify, all documents cited in witness declarations, and any other documents in the record in which witnesses are mentioned.

**4. Familiarize witnesses with the setting.** Explain to witnesses how hearing rooms will be laid out, whether there will be simultaneous translations (and, if so, that witnesses will be testifying while wearing earphones), and that there might be direct examinations and cross-examinations and tribunal questions.

**5. Familiarize witnesses with the arbitration process.** Most nonexpert witnesses have never testified before. To help witnesses relax and understand what will be happening, explain to them what hearings are about and why they are being asked to testify. You likely will have had this conversation with witnesses during preparation of their declaration; however, because several months may have passed since then and to make witnesses feel comfortable, it is useful to reiterate the point. As you do this, explain to witnesses what direct examinations and cross-examinations are and the style and manner in which they will be conducted. This is particularly important when witnesses are from a civil law country where cross-examination is uncommon.

**6. Conduct mock direct examinations and cross-examinations.** The level of witness preparation will depend on the importance of witnesses to a case and witness familiarity with relevant documents and memory of the events. The attorney who will be conducting the direct examination at hearings should conduct several mock direct examinations with witnesses. This allows the attorney to determine which types of questions elicit the most precise responses from witnesses. On the other hand, mock cross-examinations often are more effective if conducted by another attorney and in a manner that closely replicates the language and tone that witnesses will encounter at hearings.

## Hearing Logistics

**1. Have a document management plan in place well before the start of hearings.**

Then, make sure that all attorneys who are working on a hearing are familiar with it. Even though attorneys have their own style of argument and questioning, all attorneys will be working from the same set of documents. You should maintain from the outset a simple, logical document numbering system and a filing system that allows ready access to any document in the record.

**2. Practice with your technology.** If you will be using fixed presentation software, such as PowerPoint, or litigation-specific software to make a presentation, make sure that individuals who will be at the keyboard during hearings are part of the preparations for witness examinations and oral arguments. Your paralegals might have experience operating the software, but they also need to be familiar with key documents in hearings and attorneys' style in order to be flexible and responsive if attorneys suddenly must follow an unexpected line of questioning or alter an oral argument.

**3. Direct your staff to set up your breakout room.** Each of the parties in an arbitration typically has a "breakout room" that is available a day or two prior to the hearing. If it is large enough, this is a space where attorneys and witnesses will go during breaks. If possible, make sure that your breakout room contains a computer, phone, copy machine, fax, printer, and scanner so that documents may be copied and handed out at the last minute.

**4. Consider your (physical) strategic position.** Depending upon the location and style of hearings, hearing rooms may be set up like a courtroom or something more informal. You also might have the opportunity to determine, with opposing counsel, how hearing rooms will be set up. If this is the case, consider how many people you will have in a hearing room at any one time (e.g., whether all of your witnesses will be present throughout the entire hearing), whether special amenities, such as bookshelves, are necessary for your documents, and how many microphones you will need for counsel. When organizing hearing rooms, consider whether opposing counsel will be required to walk past you as they enter and exit rooms and your proximity to your breakout room.

**5. Have someone preempt technical difficulties.** Check out hearing rooms the day before hearings begin. Test the sound system and the projector. If transcription software is being used for real-time transcripts, work with the transcriber to ensure the feed is working properly. Ensure that tribunal and parties and their counsel are facing the screen and can easily view the presentations.

**6. Assist the translators.** At least one day before hearings, and after obtaining agreement from opposing counsel, provide hearing translators with a list of witness and attorney names with pronunciations. Additionally, give translators the translations of technical terms, legal terms, and terms of art that will likely be used during hearings. If the translation of a particular word or phrase is at issue in a case, discuss with opposing counsel how translators should translate it during witness testimony. It is helpful if the translations are listed alphabetically in each of the languages being used.

**7. Do not forget about the late nights.** Long hours are inevitable during hearings. If a hearing will be held in a location where your firm or agency does not have an office, make sure that the hotel or other facility where your team will be working in the evenings meets your needs. Attorneys and legal assistants should have access to sufficient office supplies and a quick, reliable overnight copy service. It also can be critical to have an attorney or legal assistant on-call at your office to handle emergencies. If a hearing is in another time zone, this person might have to work night shifts; therefore, you should confirm his or her availability in advance.

**American Bar Association Young Lawyers Division**  
***The Young Lawyer***

*“Preparing for an International Arbitration Hearing,” by Heather Van Slooten, 2008, Young Lawyers Division 101 Practice Series. © 2008 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any or portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.*

**NEXTSTEPS**

Enhance your law practice—for free—with articles from the ABA YLD’s *101 Practice Series: Breaking Down the Basics* and *201 Practice Series: Beyond the Basics* at [www.abanet.org/yld/101](http://www.abanet.org/yld/101).

---

*Ms. Van Slooten is an Attorney-Adviser with the United States Department of State, Office of the Legal Adviser. The views expressed are those of the author and not necessarily those of the Department of State or the United States Government.*

---