Procedural flexibility in international arbitration

2015 ITA Workshop: Subconscious influences in international arbitration

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Procedural triangle of arbitration

- Quality of the Award
- Time Efficiency
- Cost Savings
International Arbitration Practice
Flexibility in theory

- Degree of regulation – which rules and which seat
- Procedure – phases and duration
- Arbitrators – number and selection process
- Submissions – length and timing
- Witnesses – use and presentation
- Documents – procurement and production
- Hearing – length and process
- Confidentiality – scope and regulation
Flexibility in practice – Procedure

Generally varies ✓

✓ Bifurcation at various levels
✓ Length of procedure

Rarely varies ✗

✗ P.O. 1 and procedural timetables
✗ Settlement: proactivity of tribunals
Flexibility in practice – Submissions

Generally varies ✓

- Time-limits for briefs
- Page limits
- Degree of front-loading in briefs

Rarely varies ✗

- Directives by tribunals regarding material issues to be addressed early in the case
- Number of submissions
- Sequence of submissions
Flexibility in practice – Witnesses

- Generally varies ✓
  - Type of witness

- Rarely varies ✗
  - Use of witness statements
  - Choice of having witnesses or not
  - Type of witness questioning
  - Tribunal-appointed experts
Flexibility in practice – Documents

- Generally varies ✓
  - Scope of document production (temporal and substantive)
- Rarely varies ❌
  - Whether to have a document production phase or not
Flexibility in practice – Hearing

- **Generally varies**: Length
  - ✓

- **Rarely varies**: Whether to have a hearing or not, Early oral pleadings (e.g. prior to written submissions)
  - ✗
Debate

Are these widely accepted procedures the natural product of years of arbitration experience?

or

Just the result of unexamined habit and/or the preponderance of a given legal culture?
Thank you

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