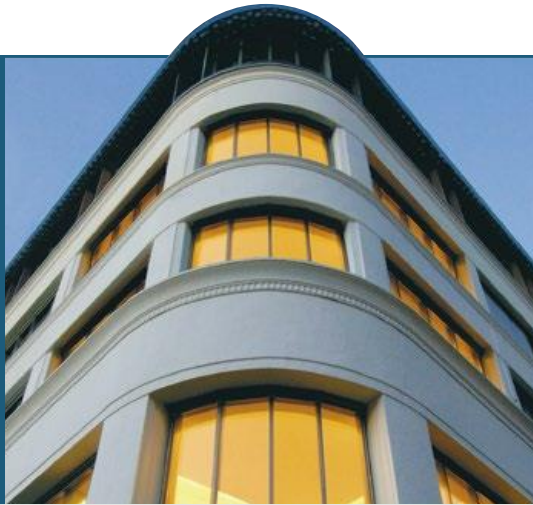


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Procedural flexibility in international arbitration

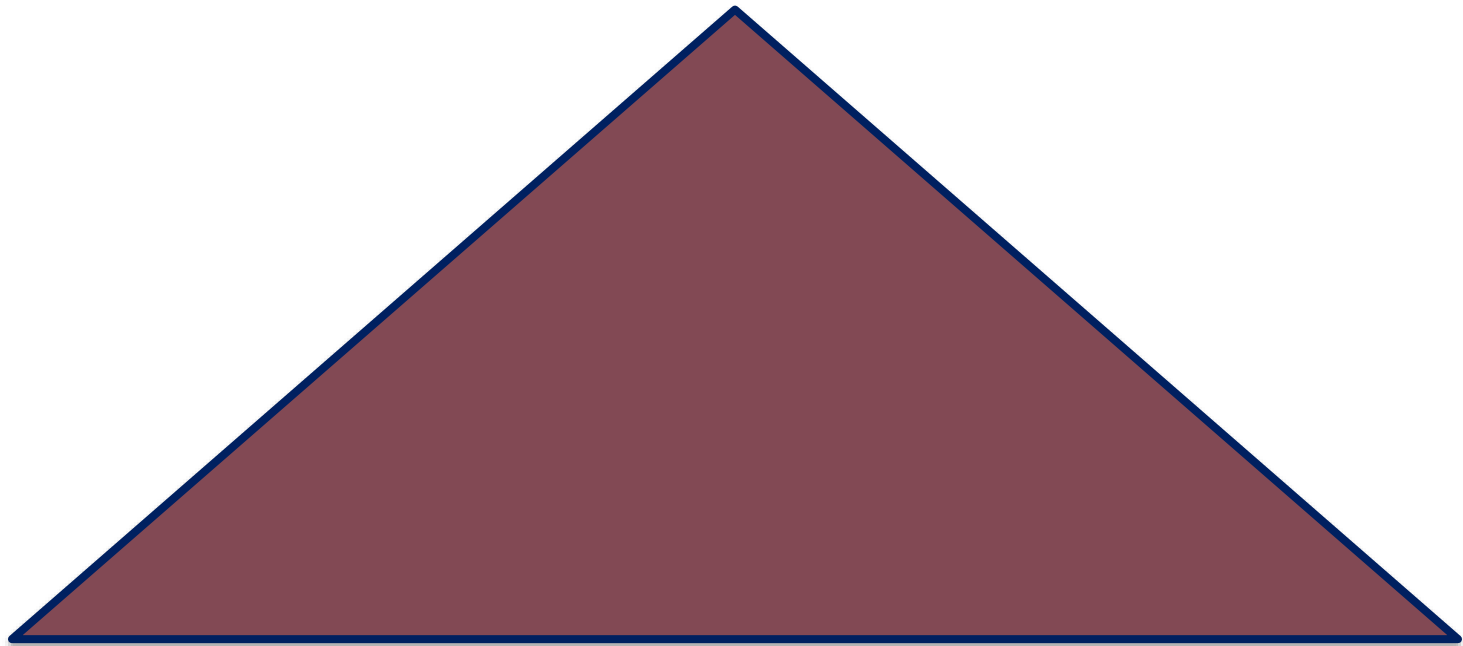
2015 ITA Workshop: Subconscious influences in international arbitration

Noradèle Radjai

Dallas – 17 June 2015

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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