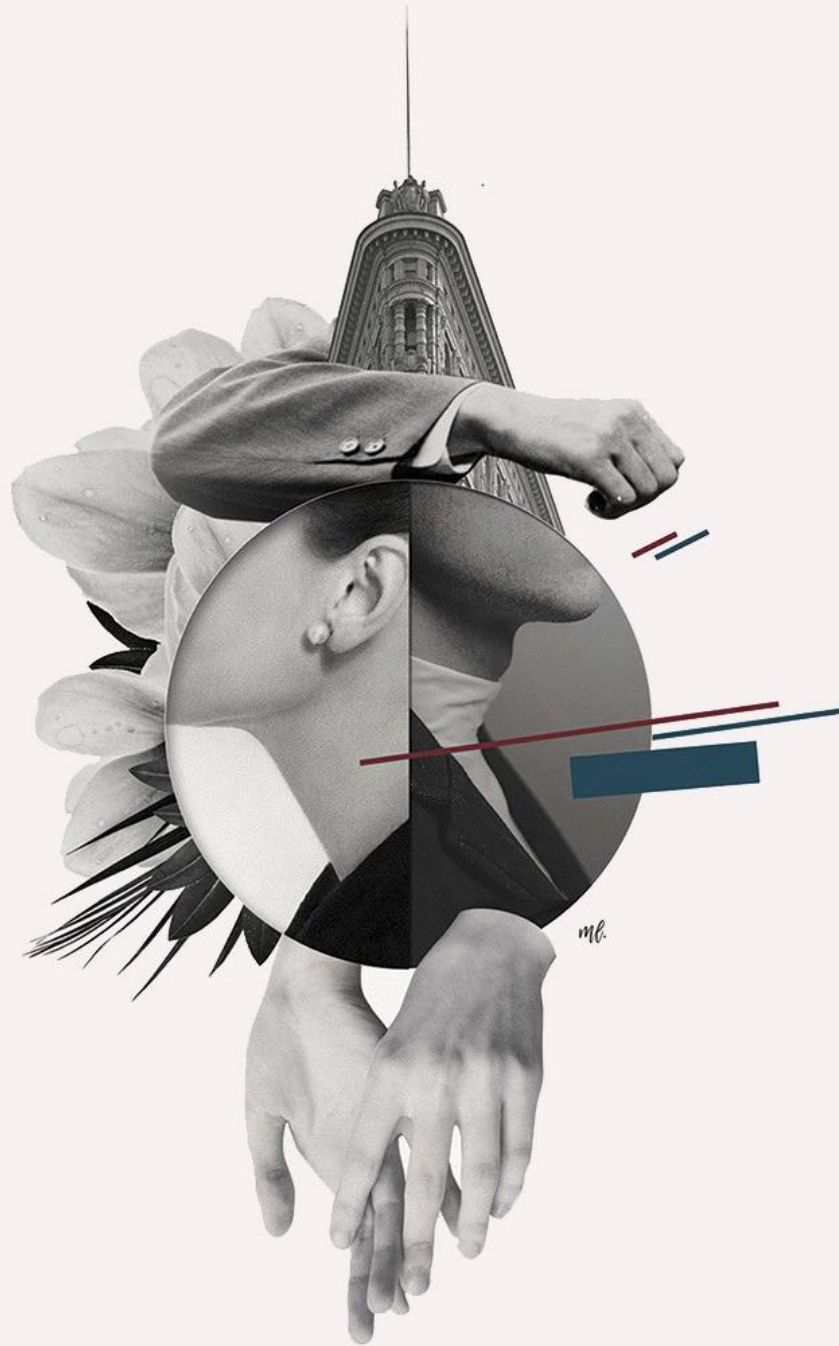


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Arbitration & Litigation Rojas Elgueta

Dispute Resolution
in the Digital Economy

31 March 2021



«ICCA STUDY ON DUE PROCESS AND REMOTE HEARINGS»

Giacomo Rojas Elgueta

Partner | Professor of Private Law

NEW LEGAL QUESTIONS



Increased use of fully remote arbitral hearings



One core question:

Does a right to a physical hearing exist in international arbitration?

METHODOLOGY



No single, transnational answer



Arbitrators must look at:

1. The law of the seat (i.e., the law regulating the arbitral proceedings)
2. The law of the place where recognition/enforcement may be sought

THE ICCA PROJECT



Co-editors of the Project



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- **4 September 2020:** Call for expressions of interest
- **150 expressions of interest covering 82 New York Convention Contracting States**
- **46 national reports published as of 31 March 2021**

<https://www.arbitration-icca.org/right-to-a-physical-hearing-international-arbitration>

REMOTE HEARINGS AND DUE PROCESS



- The preliminary results confirm the methodological assumption of the project
- This is particularly evident if we look at whether the arbitral tribunal can conduct a remote hearing in the following two scenarios:
 1. Where one party requests/agrees to hold a remote hearing, while the other party objects
 2. Where the parties agree to hold a physical hearing

REMOTE HEARINGS AND DUE PROCESS

Remote hearings
incompatible with
the law of the seat

Unsettled

Remote hearings
per se compatible
with the law of
the seat

E.g. Tunisia

Sweden

Vietnam

E.g. Denmark

Bahrain

Germany

UNCITRAL, Model Law on International Commercial Arbitration

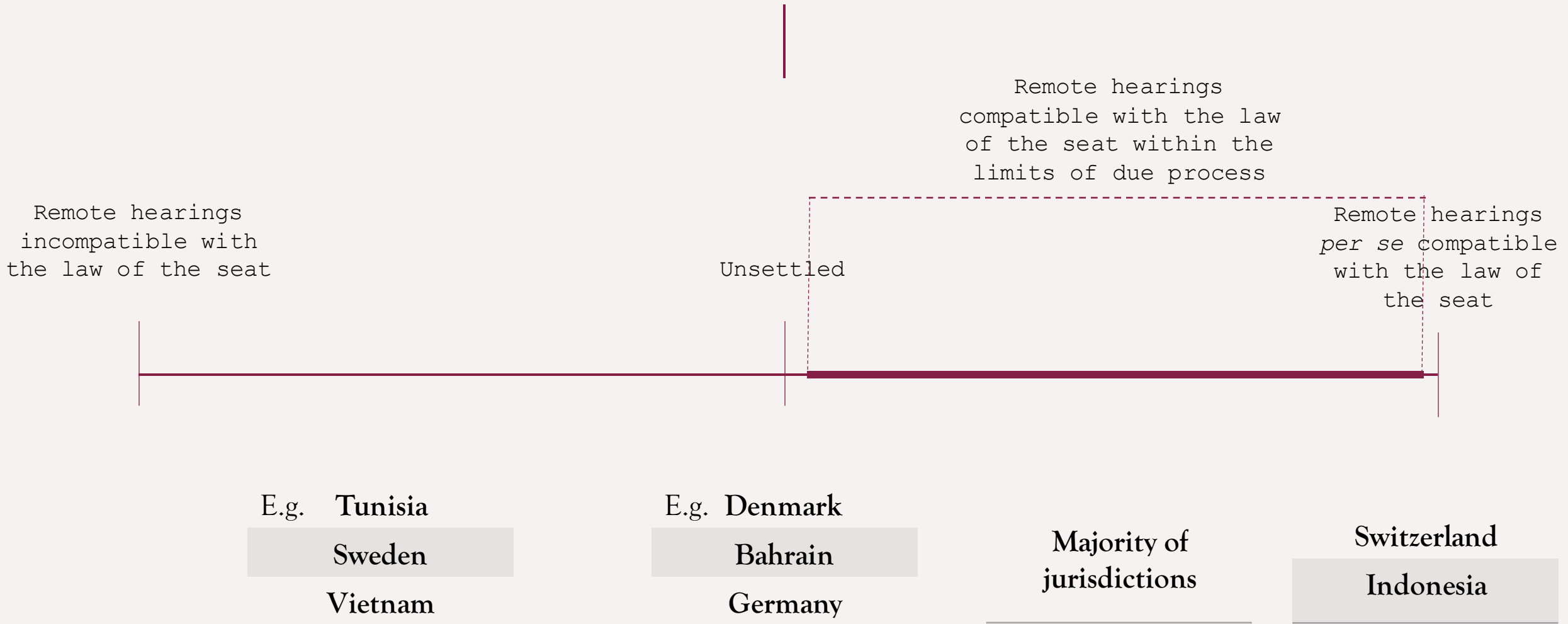
Article 18. Equal treatment of parties

«The parties shall be treated with **equality** and each party shall be given **a full opportunity of presenting his case**».

Article 24(1). Hearings and written proceedings

«Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold **oral hearings** for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, **the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party**».

REMOTE HEARINGS AND DUE PROCESS



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