XIII.3.3 - Seat of arbitration

(a) The parties are free to agree on the seat of arbitration. Failing such agreement, the seat of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(b) Notwithstanding the provisions of paragraph a) of this Principle, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

(c) The provisions of an arbitration law apply only if the seat of arbitration is in the territory of the state which has enacted that law, unless otherwise provided by that law ("lex loci arbitri").

Commentary:
1 The most important effect of the seat of the arbitration is that it determines the applicability of the arbitration law. The arbitration law of a certain jurisdiction, the lex loci arbitri, applies to an arbitration as soon as the seat of that arbitration has been fixed in that jurisdiction. Fixing the seat in a certain country, therefore, establishes a legal relationship between the arbitration on the one hand, and the arbitration law and the courts of that country on the other ("territorial theory").

2 It follows from its limited function that the seat of an arbitration must not be understood in a naturalistic, empirical fashion. Rather, it is a term of art and provides the 'formal legal domicile' (formales Legaldomizil) or 'juridical home' of the arbitration. One may also speak of the 'juridical seat' of the arbitration as opposed to the place where the hearings are actually conducted and evidence is taken.

3 This function of the seat means that there is no de-localized arbitration. Every arbitration is subject to a legal and regulatory regime. This regime is the law at the seat of the arbitration, the lex loci arbitri. The parties cannot escape this consequence. The 'juridical seat' of an arbitration functions as a connecting factor in conflict of laws. In arbitral practice, the connection of the arbitration to the arbitration law of its seat is rarely felt because most provisions of modern arbitration laws are non-mandatory and may thus be modified by agreement of the parties, e.g. by reference to a set of institutional arbitration rules.

4 The seat of the arbitration must not be confused with the physical location of the hearing(s). Subsection (b) makes it clear that the hearing(s) need not be conducted at the legal seat of the arbitration. It is not even necessary that the award is signed at the seat of the arbitration. Pursuant to Principle XIII.4.2 (c) the award is deemed to have been made at the place which is indicated in the award as the seat of the arbitration even if, in reality, the award was physically signed at another place or even in another country or on another continent.