



INTRODUCTION TO INTERNATIONAL COMMERCIAL ARBITRATION

*Columbia Law School's
Global Law and Business
Seminar*

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INTRODUCTION TO INTERNATIONAL COMMERCIAL ARBITRATION

- Session 1: Introduction
- Session 2: The arbitration agreement
- Session 3: The arbitration proceedings
- Session 4: The arbitral award, annulment and enforcement

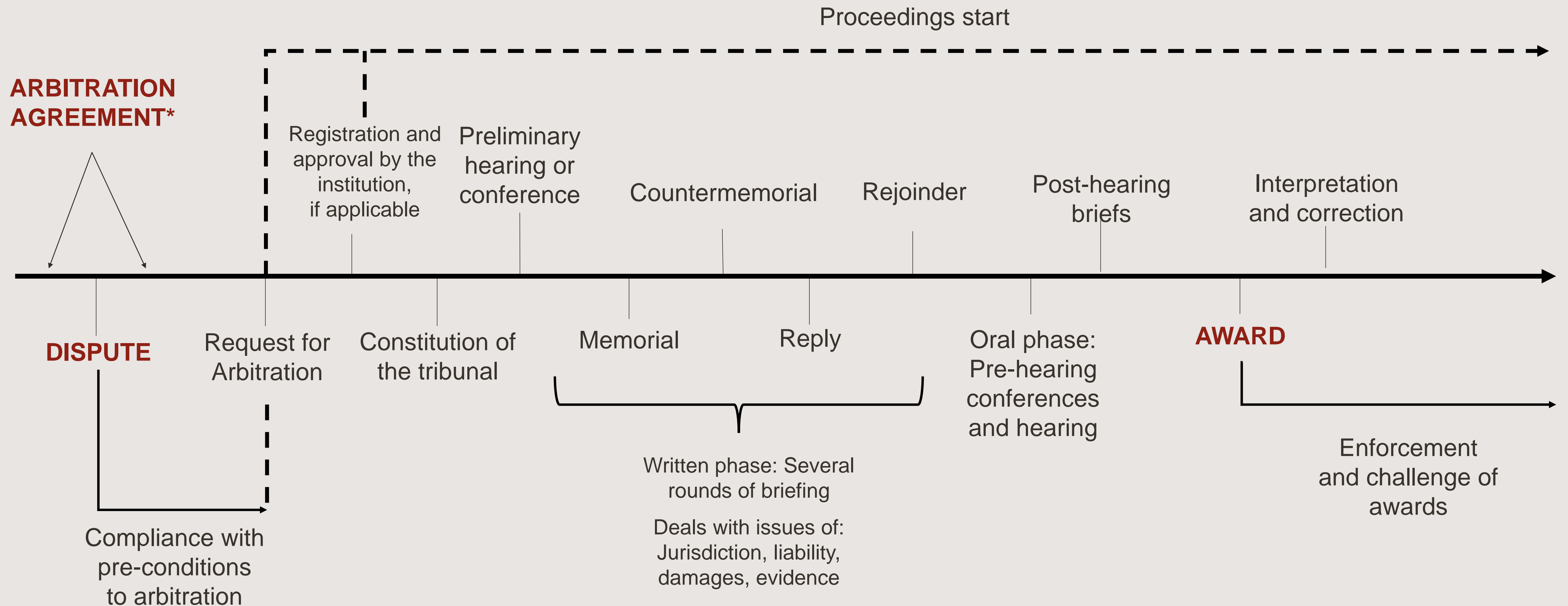
ADVANCED TOPICS IN INTERNATIONAL ARBITRATION

- Session 5: Soft law in international arbitration - the IBA Guidelines
- Session 6: Procedural “innovations”

INVESTMENT ARBITRATION

- Session 7: Investment Arbitration (Part I)
- Session 8: Investment Arbitration (Part II)

Timeline of an arbitration



What is arbitration?

Two (or more) parties in **disagreement**
agree to submit their dispute
to a **private third party**
which will decide on the issues at stake by
issuing an award
that will be **binding and enforceable** if the
debtor chooses not to comply.



Arbitration is.....

1. Consensual
2. Binding
3. Adjudicatory
4. Private

A black pen is positioned diagonally across the upper left portion of the image. Below it, the words "I Agree" are printed in a serif font, followed by an empty square checkbox. The entire scene is set against a light, textured background.

1) Arbitration is consensual

A black flashlight with a silver tip is positioned on a dark, reflective surface. It is angled towards the right, casting a bright, circular beam of light onto the surface. The beam illuminates a portion of the surface, creating a strong contrast with the surrounding darkness.

SCOPE OF CONSENT

Outside parties' consent: tribunal has no jurisdiction

- Potential jurisdictional challenge
- Potential annulment of award
- No enforcement of the award

A grayscale background image of a heavy metal chain. A large, semi-transparent white rectangle is centered over the image, containing the text '2) Arbitration is binding'.

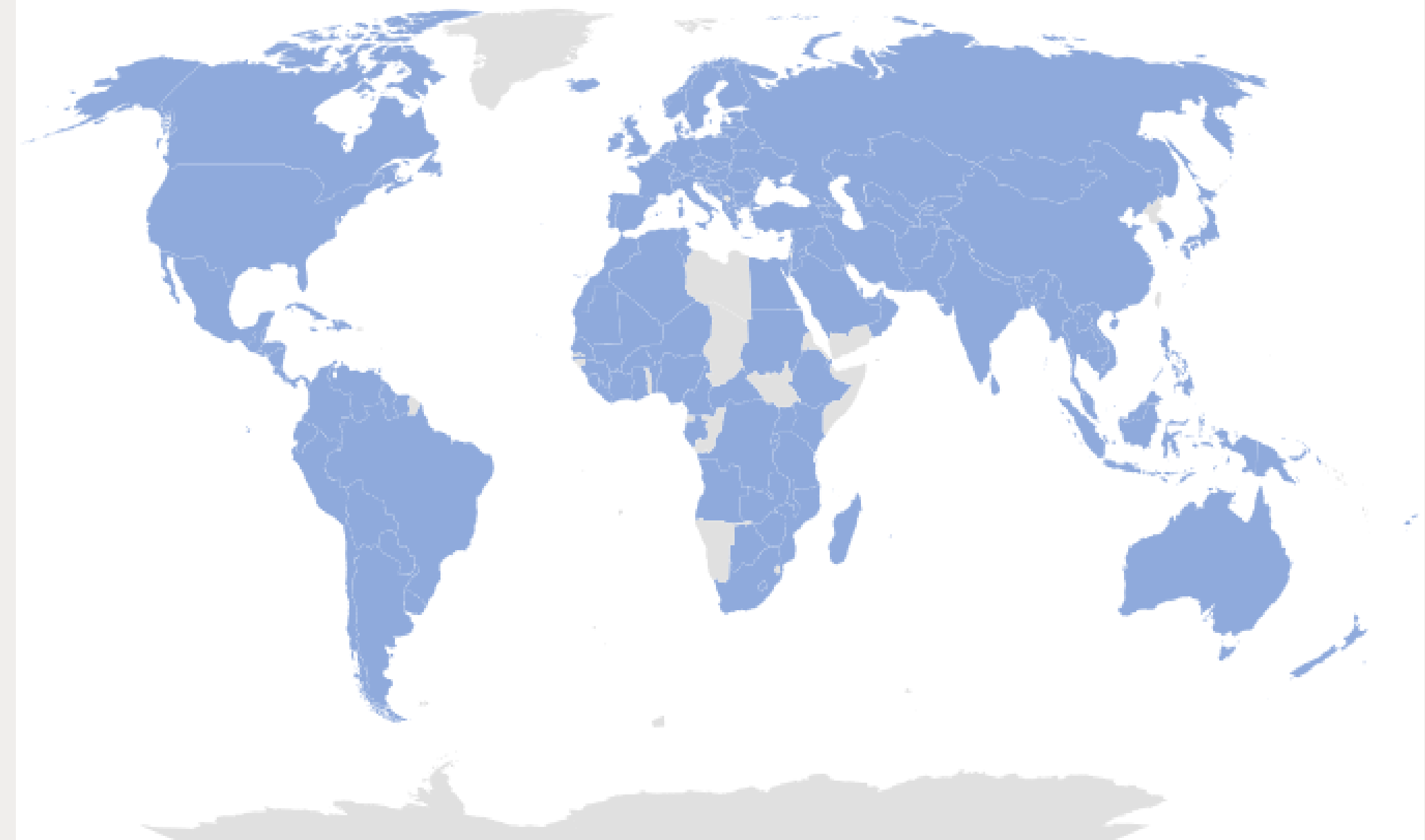
2) Arbitration is binding

Legal Framework: The New York Convention

1958 New York Convention on Recognition and Enforcement of Foreign Awards

- Foundation instrument of International Arbitration
- 172 Members
- Two anchors:
 - At the commencement of the arbitration (art. II.3)
 - At the end of the arbitration (art. III)

NYC CONTRACTING STATES 2023



The arbitration process is binding – See NYC Article II

“(1) Each contracting state **shall recognize an agreement in writing under which the parties undertake to submit to arbitration** all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.”



The arbitration process is binding – See NYC Article II

“(3) The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, **shall**, at the request of one of the parties, **refer the parties to arbitration**, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.”



The arbitration award is binding – See NYC Article III

“Contracting States must “recognize arbitral awards as **binding and enforce** them in accordance with the rules of procedure of the territory where the award is relied upon...””



A wooden gavel and a wooden mallet are shown on a light-colored surface. The gavel is positioned diagonally across the upper right, and the mallet is in the lower left. A semi-transparent white rectangular box is overlaid on the image, containing the text.

3) Arbitration is an adjudicatory process

**4) Arbitration is a
private mechanism
for the resolution
of disputes**

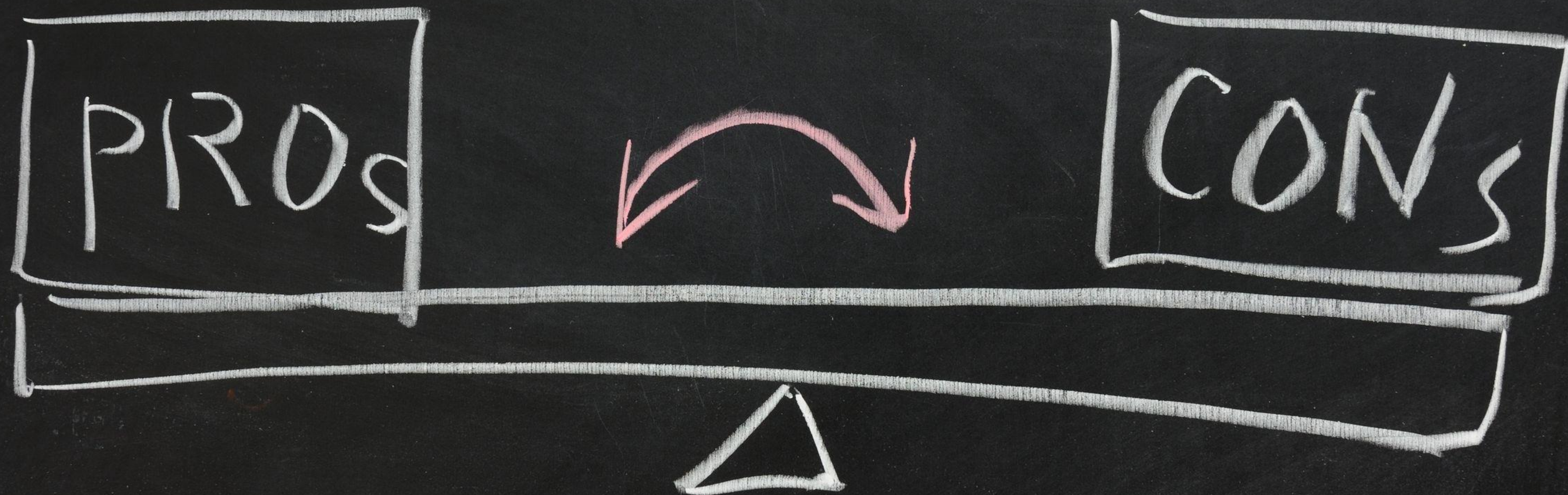


Arbitration

VS



Mediation



Advantages

- Neutrality of forum (Vz-Jp)
- Neutrality of arbitrators
- Arbitrator selection
- Confidentiality
- Procedural flexibility
- “One stop shop” or no appeals
- Award “travels”

Disadvantages

- Limited powers of arbitrators
- Conflicting awards: no precedent leads to insecurity
- No joinder of third parties
- Cost?
- Time, efficiency?

What is the legal framework under which international commercial arbitrations operate?

International arbitration crosses national boundaries

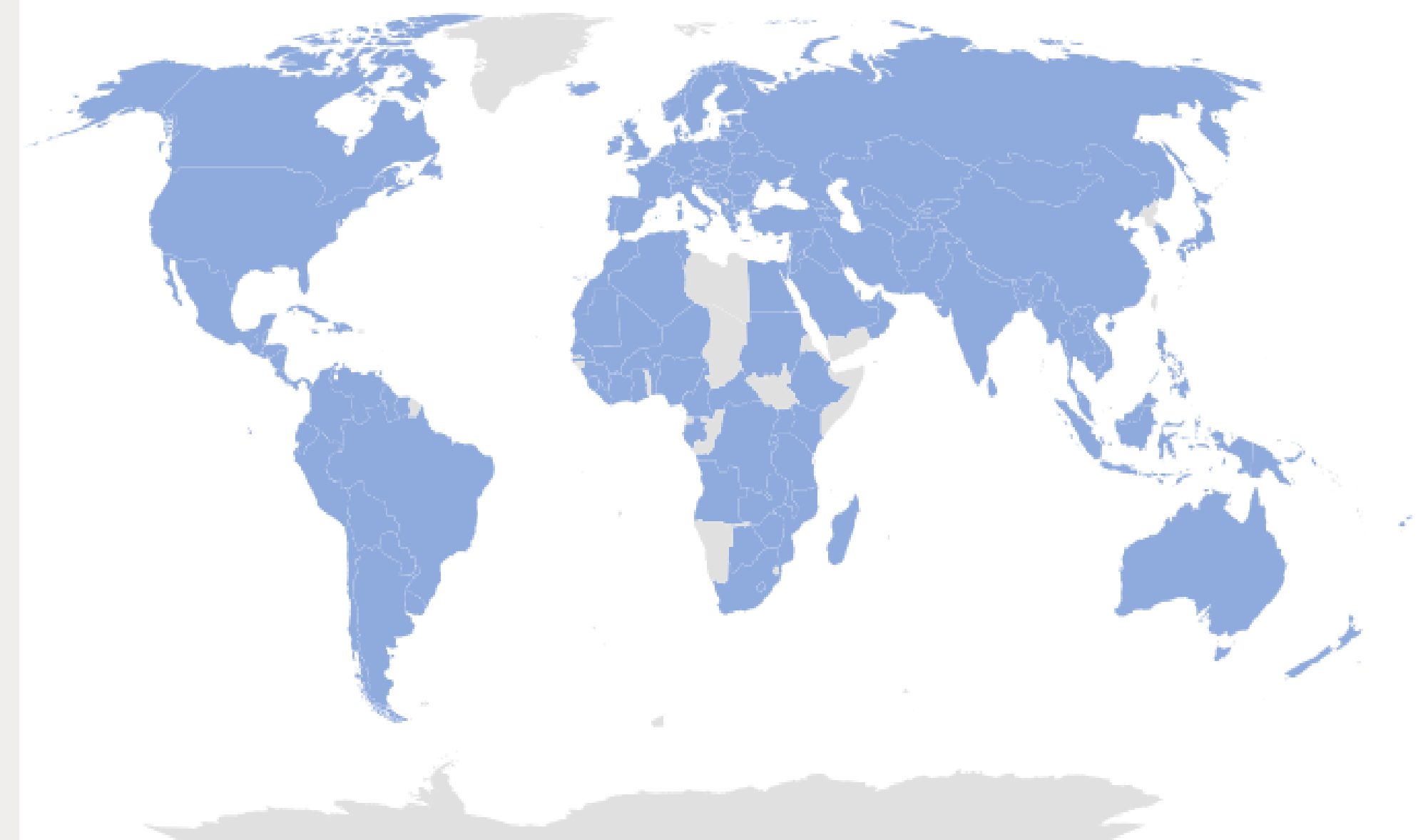


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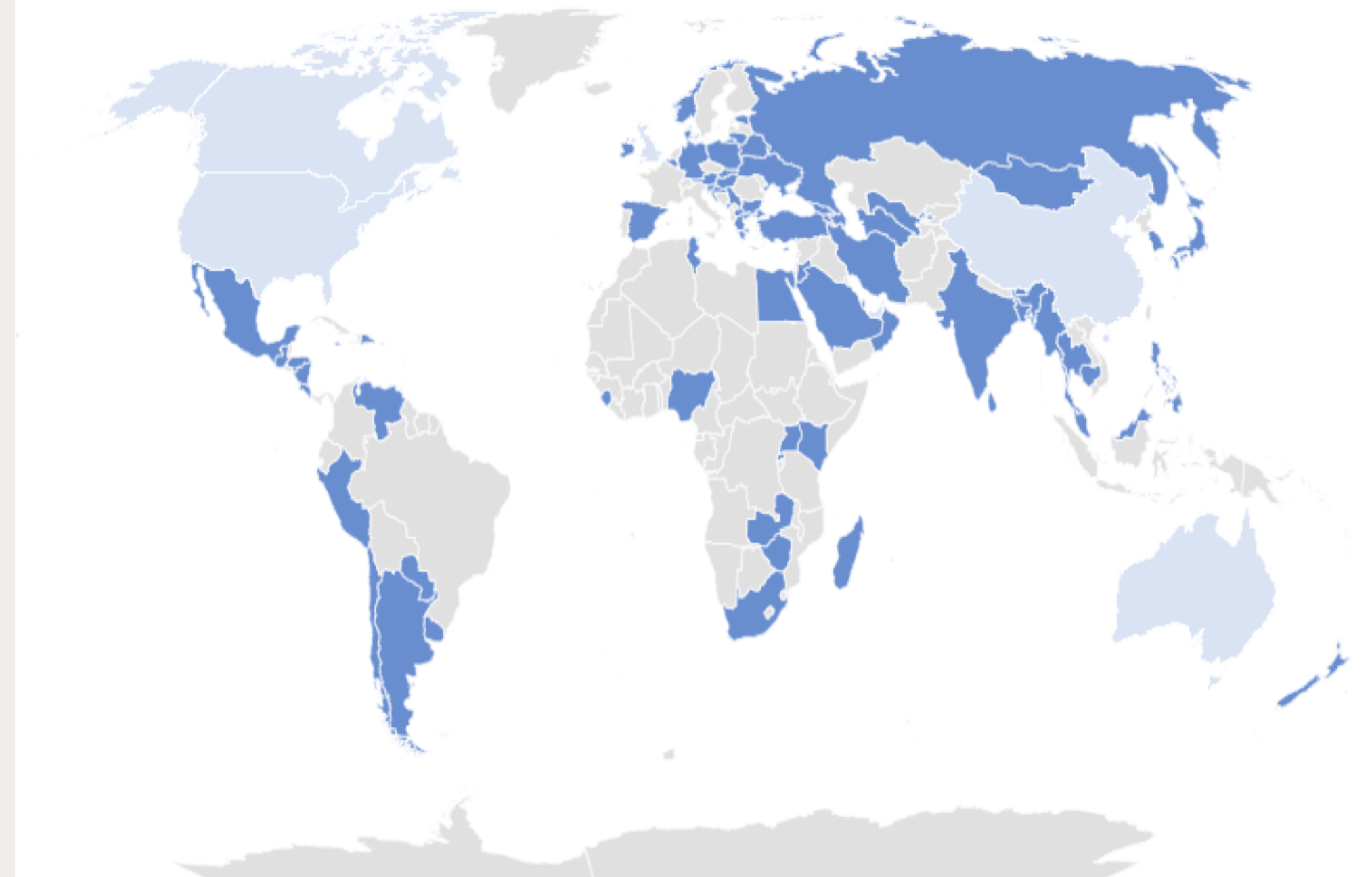
Legal Framework: The UNCITRAL Model Law

UNCITRAL Model Law on International Commercial Arbitration (1985, 2006 amendment)

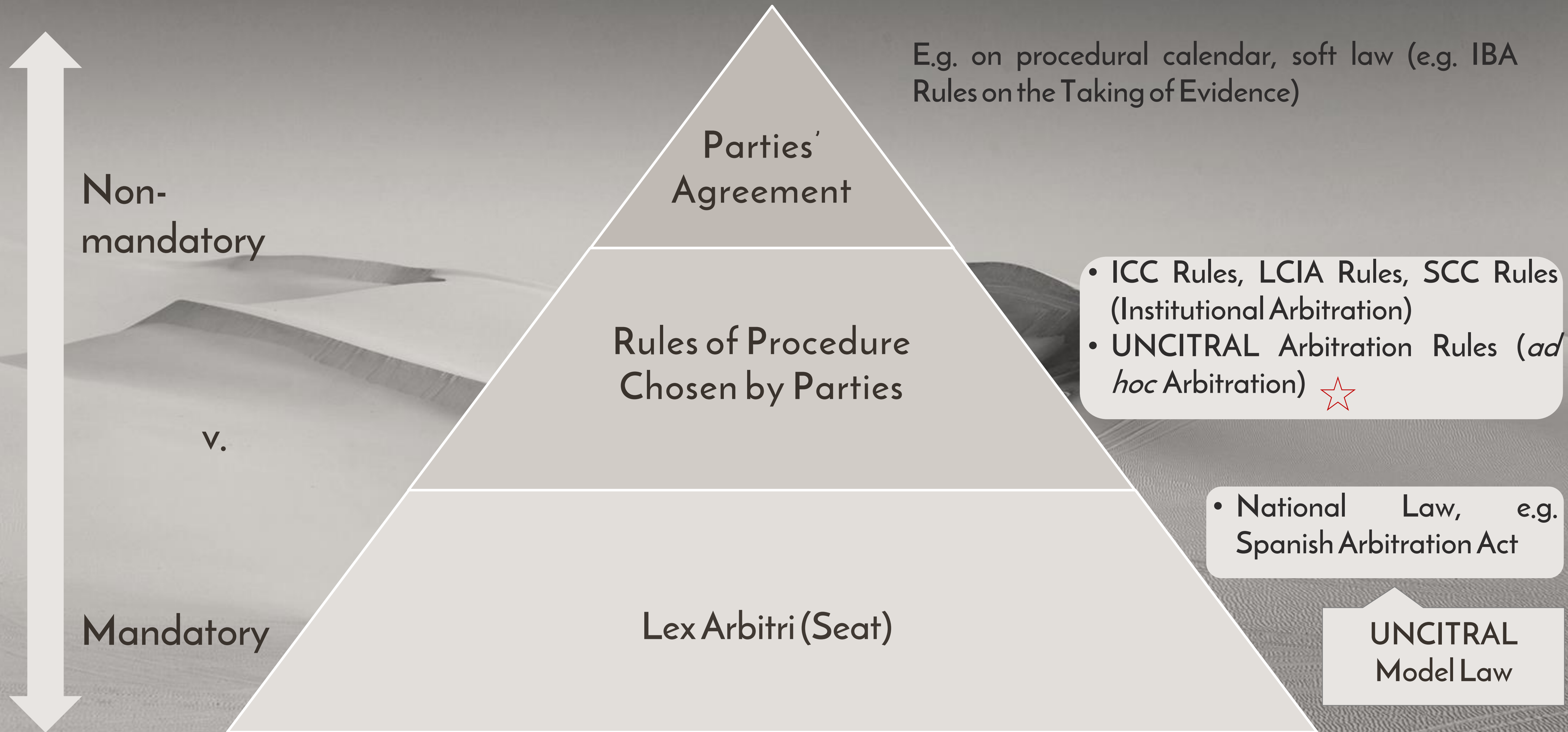
- More than 87 States in 120 jurisdictions
- Worldwide consensus on key aspects of International Arbitration practice
- Assists States in reforming and modernizing their arbitration laws
- Harmonization through uniform rules

Watch out! Do not confuse with UNCITRAL Arbitration Rules

STATES WHOSE ARBITRATION LAW IS BASED ON UML



How is the arbitral process determined?



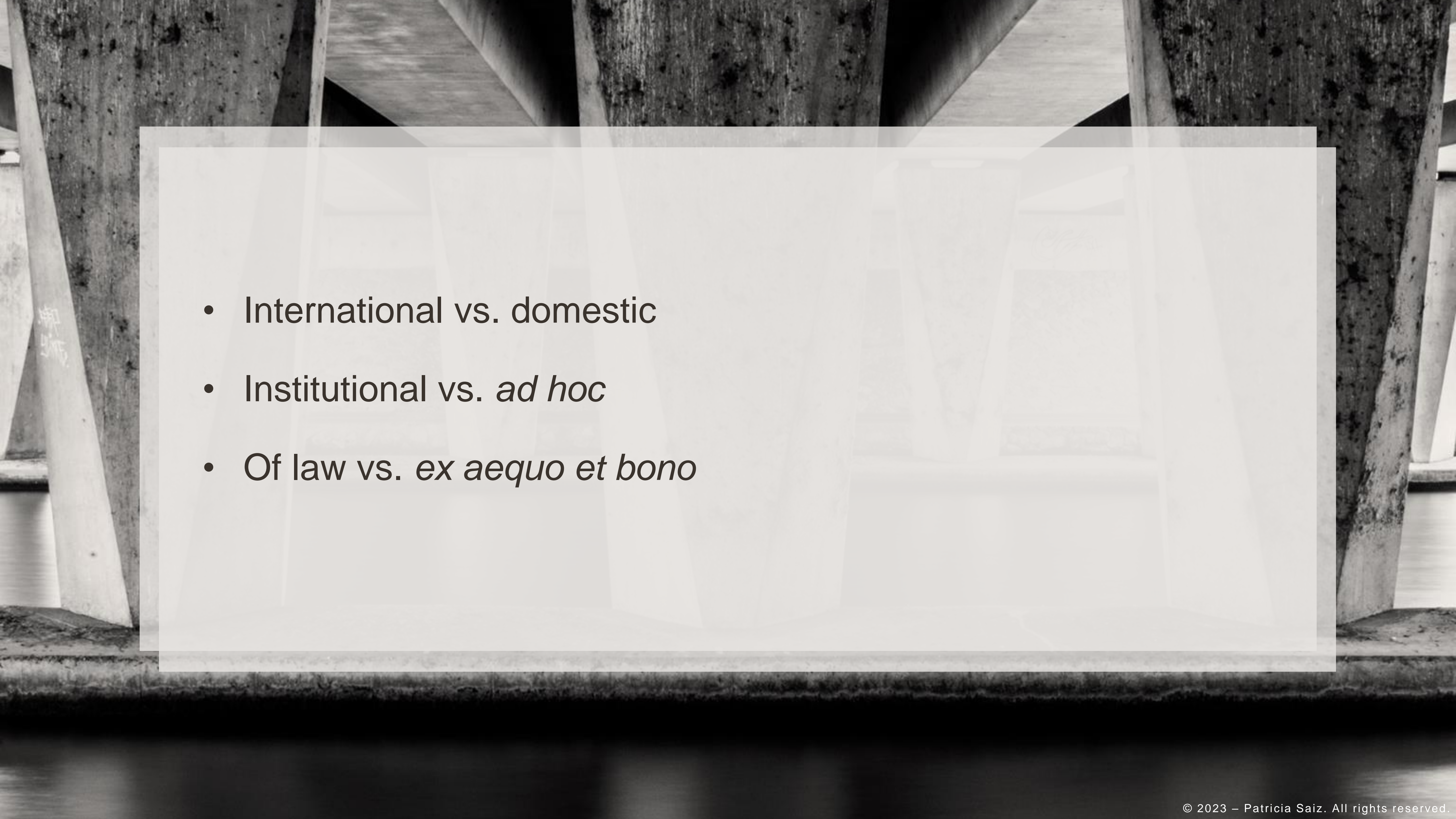


Exercise

Maples Co. (Canada) vs. Botellas S.A. (Argentina)

- Sales Agreement contains the following arbitration clause: *“All disputes arising in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be London, England, and the language of the arbitration shall be English. The contract, excluding this clause, shall be governed by the laws of Argentina.”*
- Maples Co. sues Botellas S.A. for breach of contract for 1,000,000 USD
- Botellas S.A. has most of its assets in Brazil

Explain the role, if any, of: the ICC Rules, the Argentinian Arbitration Act, the Canadian Arbitration Act, the English Arbitration Act, the Argentinian laws, the UNCITRAL Model Law, the UNCITRAL Rules, the New York Convention and the IBA Rules on the Taking of Evidence in International Arbitration.

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- International vs. domestic
 - Institutional vs. *ad hoc*
 - Of law vs. *ex aequo et bono*



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THANK YOU!