

Recent Developments in International Arbitration

Dr Antonios D. Tsavdaridis

Partner – Head of Arbitration, *Rokas International Law Firm*

Lecturer, Democritus University



Advantages of arbitration

- Choice of arbitrators
- Reduced cost
- Speed
- Procedural flexibility
- Confidentiality
- Enforceability



International Arbitration

- Substantive or economic criterion
- Procedural criterion
- Legal criterion
- Organisational criterion
- Subjective criterion
- Applicable law criterion



International Arbitration

- Ad hoc
- Institutional
- Quasi institutional (= ad hoc)



Developments in 3 aspects of international arbitration

- Arbitration rules
- Legal framework on national legislation level
- Enforcement of arbitral awards

Arbitration rules

- UNCITRAL Arbitration Rules
- ICC Arbitration Rules
- IBA Rules on the Taking of Evidence

Legal framework on national legislation level

- UNCITRAL Model Law

Enforcement of arbitral awards

- New York Convention

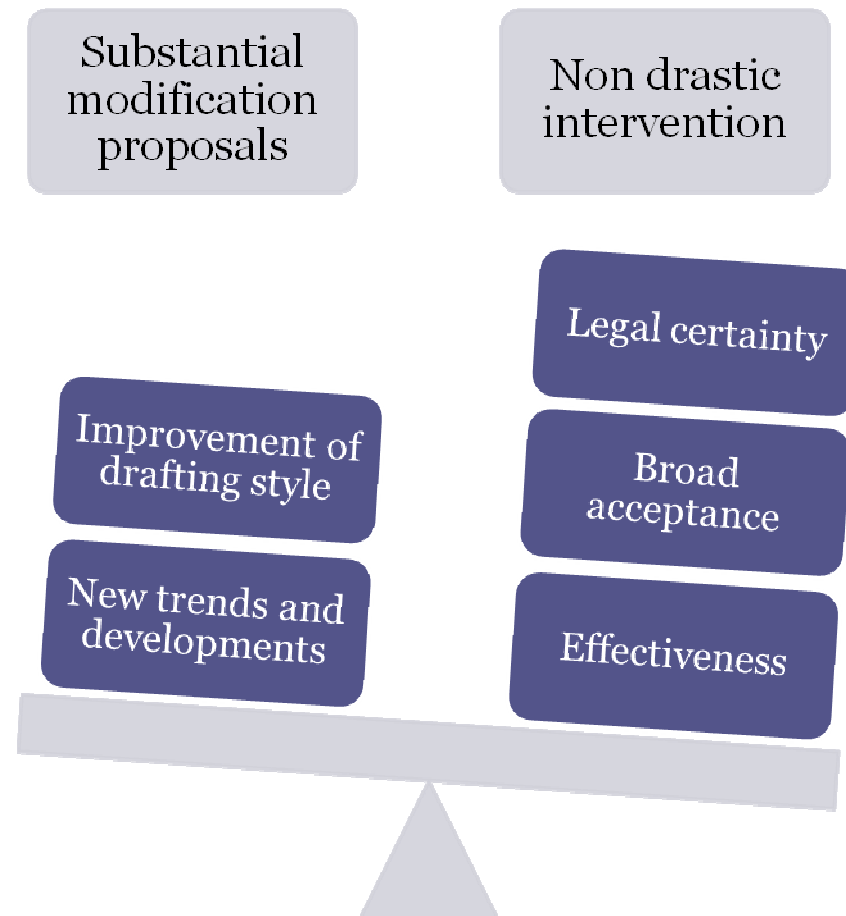
Enforcement: New York Convention

Drafted in 1958

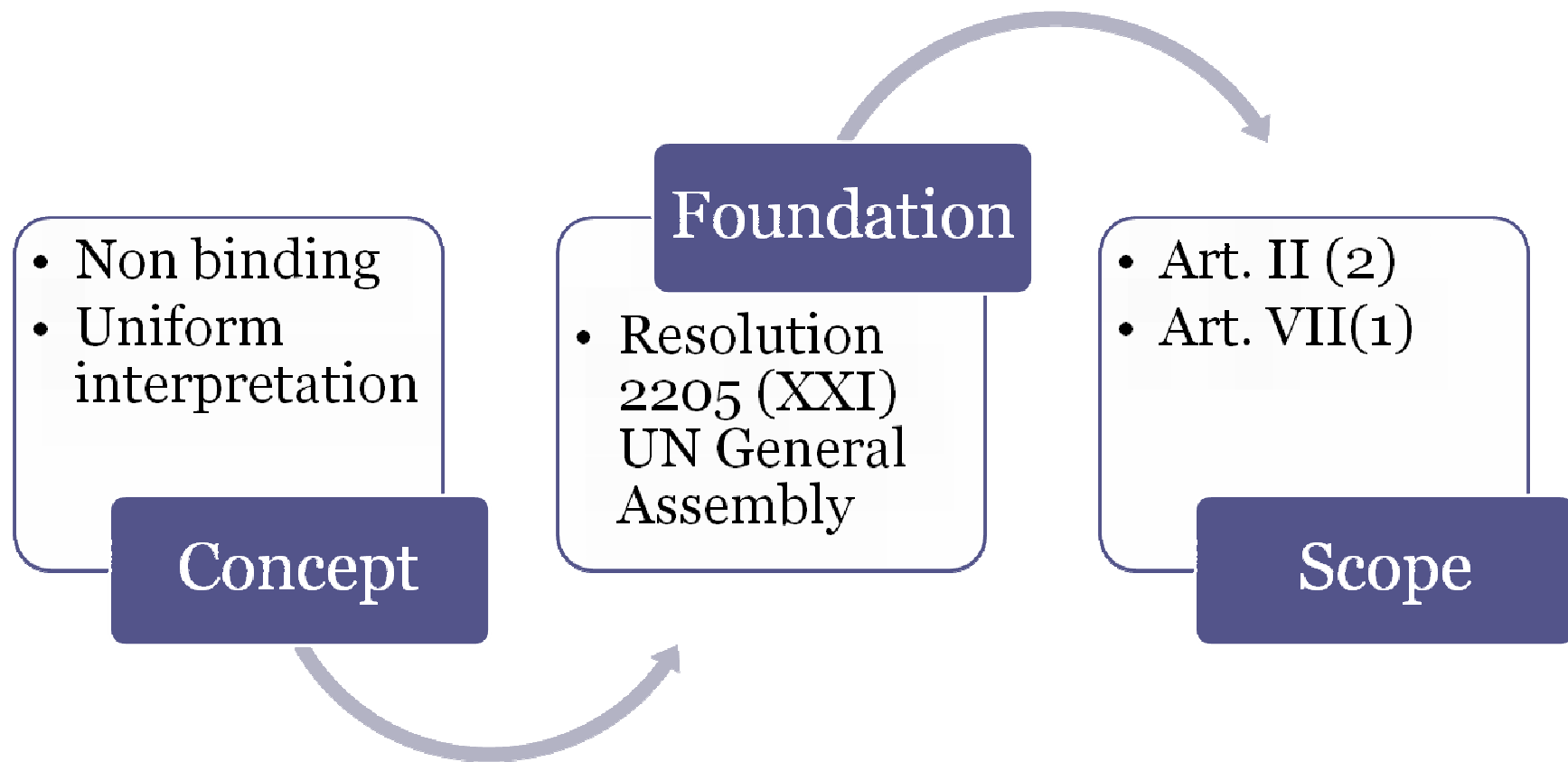
Ratified etc. by 146 states

Most effective advantage of arbitration in international level

New York Convention (NYC)



NYC: Non drastic intervention - Recommendation (2006)



NYC: Recommendation (1)

Article II(2)

Form of arbitration
agreement

Electronic transactions

Volume increase

Harmonisation with
UNCITRAL Model Law
(2006)

New institutional
framework (international
and national)

Scope of application

Indicative list

NYC: Recommendation (2)

Article VII(1)

More-favourable-right (mfr)-provision

Imperfect provision

Provides only for arbitral awards

Application by analogy to arbitration agreements

Extension of the provision

Applies also to arbitration agreements

NYC: National legislations

NYC (1958)

- Binding international convention
- Ratification, approval, accession

NYC
Recommendation
(2006)

- Non binding instrument
- Compliance welcomed for uniform application of NYC

NYC: Substantial revision debate

“Miami Draft”

(van den Berg’s “Hypothetical Draft Convention”, “Dublin Convention”)

Addition of
provisions

Revision of
provisions

Clarification of
provisions

Repealing of
provisions

Adjustment of
provisions

National legal framework (lex arbitri): UNCITRAL Model Law(ML)

Drafted in 1985

Adopted by 60 states (+11)

Selectively: wholly, partially, with amendments or additions, international / domestic arbitrations

ML: Revision (2006)

Interim measures (Articles 1,17 +10 new)

- Concurrent jurisdiction of arbitrators
- Recognition & enforcement regime
- Ex parte injunction – 20-day validity

Form of arbitration agreement (Article 7)

- Modern & electronic transactions
- Harmonization with NYC Recommendation (2006)
- 2 alternatives: complex or simple provision
- Agreement must be recorded in any form and not in writing

Enhancing uniform interpretation (Article 2A)

- International origin
- ML general principles

ML: National legislations

ML
(1985)

- Adoption with changes
- Need to pass national legislation

ML
(2006)

- Changes do not influence automatically already existing national legislation
- Acceptance or not and its extent: duty of national legislator
- Already: 10 states (+1)

UNCITRAL Arbitration Rules (AR)

Drafted in 1976

Broad use

Flexible use

AR: 2010 Revision

Respondent's response to notice of arbitration (Article 4)

- Within 30 days
- Avoid taking claimant by surprise

Appointing Authority (Article 6)

- More specific provisions (in the absence of parties' agreement)

Interim measures (Article 26)

- Provision widening
- Criteria for deciding

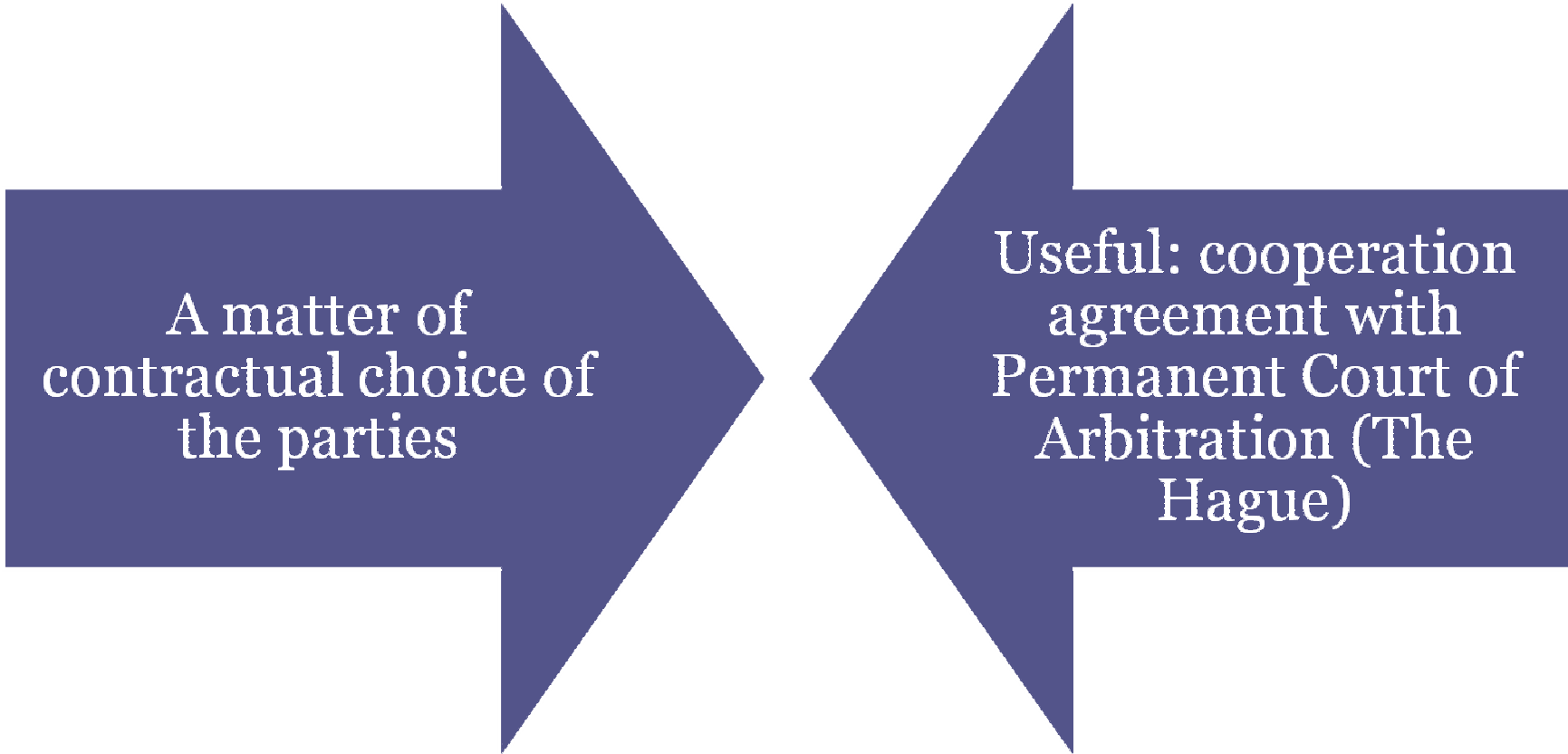
Multiparty arbitrations (Articles 10,17)

- Appointment of arbitrators – reconstitution of arbitral tribunal
- Joining of third parties at a subsequent stage
- Absence of provision for consolidation of independent arbitrations

Costs (Articles 41,42)

- Control mechanism
- Reasonable apportionment principle

AR: National legislations



A matter of
contractual choice of
the parties

Useful: cooperation
agreement with
Permanent Court of
Arbitration (The
Hague)

ICC 2012 Arbitration Rules

Revision of 1998 Rules

Must be selected by parties

Institutional arbitration

ICC 2012 Rules

Multiparty arbitrations

- Multiple parties
- Multiple contracts
- Joinder of parties

Organisational aspects

- Case management
- Confidentiality
- Powers of Court (ICA) / Tribunal

Emergency arbitrator

- Interim/conservatory relief
- Before tribunal is constituted

IBA Rules on the Taking of Evidence

Drafted in 1983, 1999

Supplementary application

Also as guiding rules

IBA: 2010 Revision

Consultation in
evidentiary issues
(Articles 2,3)

- Production of documents in stages

E-disclosure
(Article 3)

- Setting rules
- Limiting fishing

Legal impediment
or privilege
(Article 9)

- Procedural economy & proportionality
- Good faith

Trends of the new provisions

