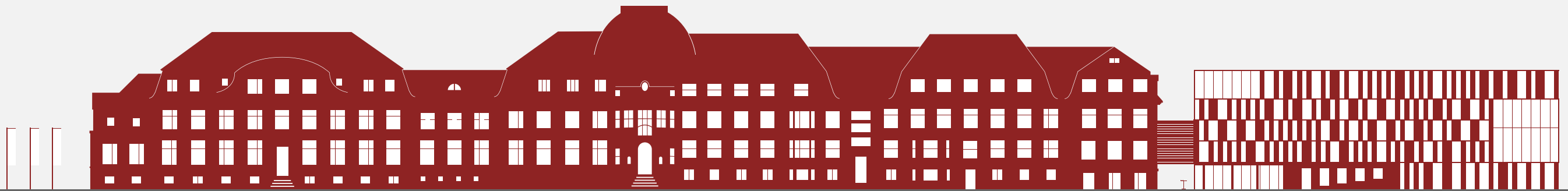




BUCERIUS LAW SCHOOL
HOCHSCHULE FÜR RECHTSWISSENSCHAFT

CENTER FOR INTERNATIONAL DISPUTE RESOLUTION



Introduction to the Vis Moot / CDRC

Professor Dr. Stefan Kröll, LL.M.

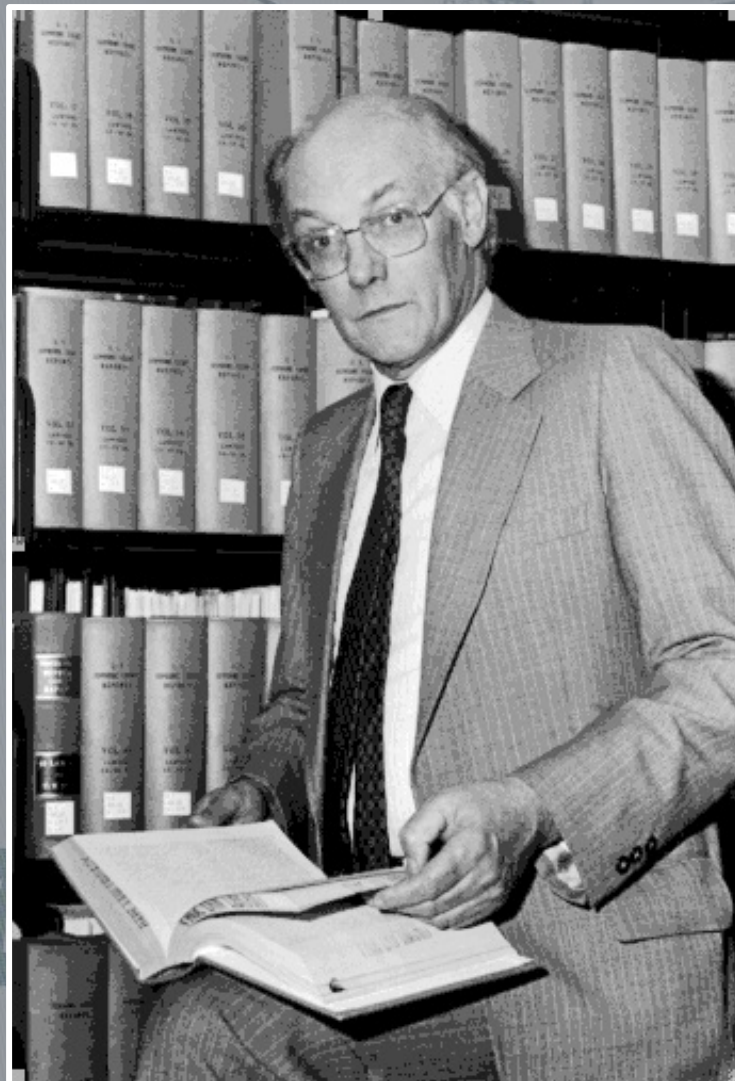
Drafting School in International Contract Law and Dispute Resolution

15 September 2025 - Krakow

Agenda (... or „Roadmap“)

- The Vis Moot Court as an educational event
 - History / Set up
 - Educational Objectives
- The procedural side: Arbitration
- The substantive side: CISG
- ... and the economic side: the CDRC

The VIS MOOT



Willem Cornelis Vis



Prof. Dr. Eric E. Bergsten



Directors



Prof. Dr. Stefan Kröll, LL.M.
Bucerius Law School

Patrizia Netal
KNOETZL

Prof. Dr. Christopher Kee
Flinders University

Timeline



Written Submissions

Oral Phase with PRE-MOOTS

CASE RELEASE

MEMO I

Exchange

MEMO II

ORAL HEARINGS
VIENNA

OKT

DEZ

JAN

EASTER

The Vienna Week



GENERAL ROUNDS

ELIMINATION ROUNDS

OPENING
CEREMONY

ANNOUNCEMENT

FINAL
AWARDS
BANQUET

FR

SAM

SON

MON

DIE


MIT

DON



The Problem




ANNUAL WILLEM C. VIS
INTERNATIONAL COMMERCIAL
ARBITRATION MOOT

THE PROBLEM

THIRTY-FIRST ANNUAL WILLEM C. VIS
INTERNATIONAL COMMERCIAL ARBITRATION MOOT

VIENNA, AUSTRIA
2023 / 2024

ORAL HEARINGS
22 – 28 MARCH 2024

Organised by:
Association for the Organisation and Promotion of the Willem C. Vis
International Commercial Arbitration Moot

and

TWENTY-FIRST ANNUAL WILLEM C. VIS (EAST)
INTERNATIONAL COMMERCIAL ARBITRATION MOOT
HONG KONG

ORAL ARGUMENTS
10 – 17 MARCH 2024

Organised by:
Vis East Moot Foundation Limited

www.vismoot.org

- 4 Issues
- 2 Procedural Questions
 - UNCITRAL Model Law
 - Institutionelle Rules
- 2 Substantive Questions: CISG
- Product

The Vis Moot:

„Educational event
organized as a competition“



Drafting the Case:

Objectives and Background

- Educational event
 - Substantial Educational Objectives
 - Understanding beyond the specific legal problems
 - Topical issue
 - Controversial or otherwise interesting
 - As close to Reality as possible
 - Real case problems
- Competition Element
- Social and Networking Element

Congratulation

- for participating in a lifetime experience
„the Olympic Games of international commercial law“
(BBC)
- for being selected to become a team member
 - Necessary capacity to participate
 - Required team ability
- for becoming part of the Moot family
 - Friends all over the world
 - Giving back to future moot generations

Benefits of participating: You learn ...!!

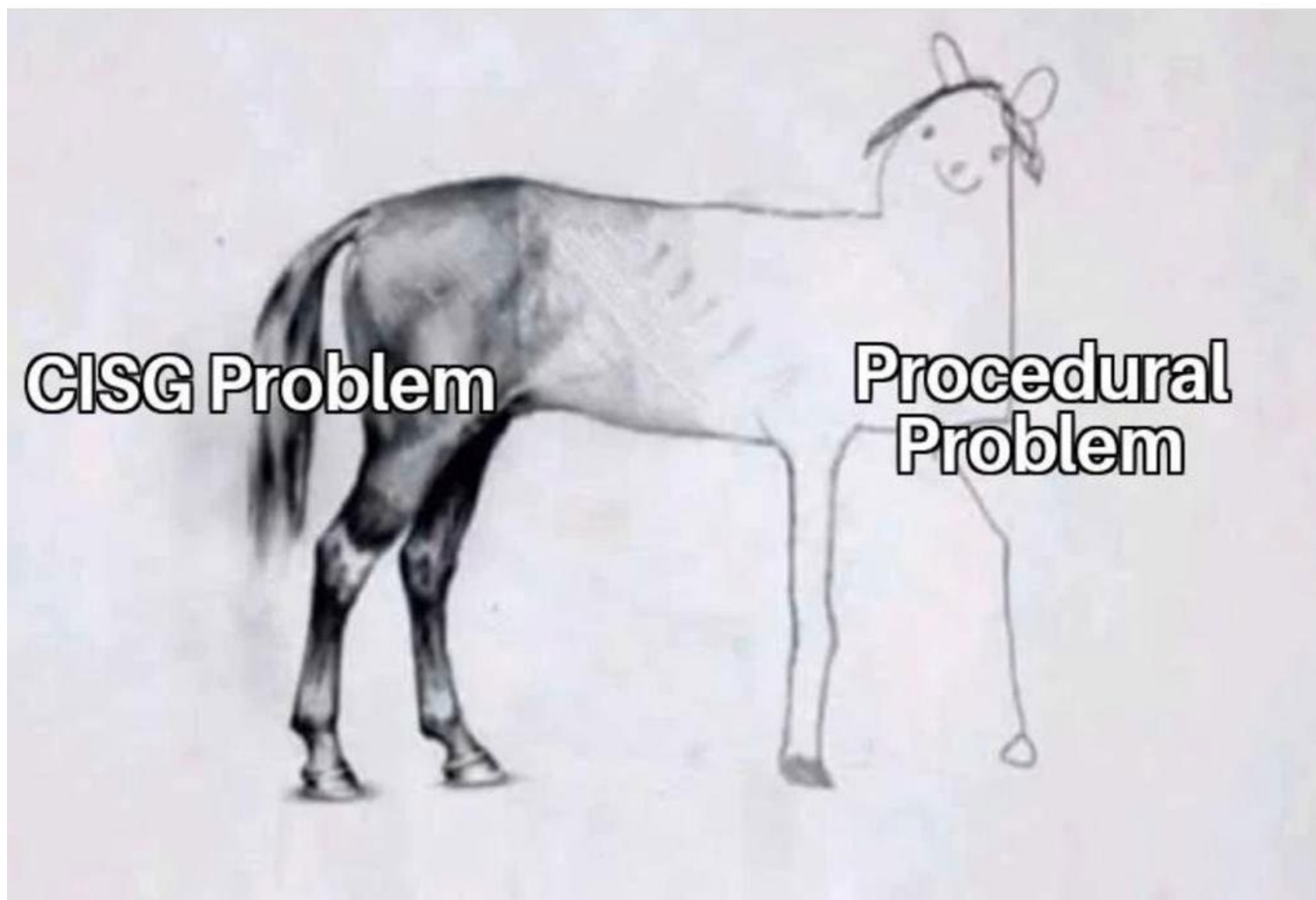
- Important skills for any type of job within the legal profession
 - Teamwork; motivate and criticise colleagues
 - Work ethics
 - Writing skills
 - Presentation skills
- How to work as a lawyer
- How to work in an international environment
- About arbitration and the CISG
- About an interesting product

33 Vis Moot: Starting



schlechtmemeschwenzer
Vindobona

...



Arbitration: Definition

„Arbitration is a process in which the **parties agree** to refer their disputes to one or more neutral persons (arbitrators) in lieu of the court system for judicial determination with a binding effect“

(taken from Lew/Mistelis/Kröll, International Comparative Commercial Arbitration, 2003, para. 1-5)

... constituting an enforceable title

(to be added in second edition)

Characteristics of Arbitration

- Party autonomy
 - Referral of disputes
 - Structure of proceedings and applicable law
- Judicial determination
 - Right to be heard
 - Equal treatment
 - Neutrality of decisions maker
- In lieu of the state courts
 - Need to deny jurisdiction / stay proceedings
 - Enforceable result

Relevance of „Characteristics“

„The Parties set up a five member contract advisory board („Vertragsbeirat“). The employer and the contractor will each appoint two members. Both Parties will nominate their CEO and their technical director or project director for the board. The contractor may also appoint the director of subcontractor instead of its own director.

The four members of the advisory board will appoint the president of the board. The president must have the qualification to become a judge pursuant to s. 5 German Law on Judges...

....

The Parties may submit any dispute to the advisory board for a binding decision.“

(PRIVATE CONTRACTOR VS. LOCAL AUTHORITY, German Supreme Court, 11 October 2017 – I ZB 12/17, NJW 2018, 869)

Relevance of „Characteristics“

“14. **Arbitration** - All disputes or differences whatsoever arising between the parties out of, or relating to, the construction, meaning and operation or effect of the contract or the breach thereof shall be settled by **arbitration in India** through the arbitration panel of the Indian Council of Arbitration in accordance with the **Rules of Arbitration of the Indian Council of Arbitration**.

If either party is in disagreement with the arbitration result in India, either party will have the right to appeal to a **second arbitration in London**, UK in accordance with the Rules of Conciliation and Arbitration of the **International Chamber of Commerce** in effect on the date hereof and the result of this second arbitration will be binding on both the parties.

Judgment upon the award may be entered in any court in jurisdiction.”

(Taken from contract between Centrotrade Minerals and Metals Inv and Hindustan Copper Ltd. – Indian Supreme Court 2017)

Basic Principles: Party Autonomy

UNCITRAL Model Law

- **Details of Arbitration proceedings**
 - Composition of the arbitral tribunal (Art. 10 et seq)
 - Determination of the procedure (Art. 19 et seq.)
 - Submission of claims and evidence (Art. 34 (2)(a)(iii))
 - Applicable law to merits (Art. 28)
- **Guarantee of a fair trial**
 - Independence of arbitrators (Art. 12, 13)
 - Equal treatment of the parties (Art. 18)
 - Right to be heard (Art. 18)

Basic Principles: Limited Court Intervention

UNCITRAL Model Law

- **Limited judicial intervention (Art. 5)**
 - Primarily in support of arbitration
 - Supervision to guarantee the fairness of the proceedings

- **Guarantee of an effective procedure**
 - „Guarantee“ of constitution of tribunal
 - Substitute appointments (Art. 11)
 - Hearing without participation of obstructing party (Art. 25)
 - Guarantee of efficient interim relief (Art. 9, 17 ML)
 - Support in the taking of evidence (Art. 27)
 - Decisions taken by majority (Art. 29; 31(1))

Regulatory Web

Dispute submitted to arbitration

(1) Mandatory rules of the
applicable national arbitration
law *e.g.* arbitrability

Limits to party autonomy

(2) Arbitration
Agreement

(3) Chosen
Rules

Arbitration

(4) International

Arbitration

Practice

(5) Applicable

Arbitration

Law

Limits to party autonomy

(1) Mandatory rules of the
applicable national arbitration
law *e.g.* due process

(6) International conventions:
obligation to enforce arbitration agreement
and awards

High Court Singapore

AQZ vs. ARA [2015] SGHC 49, 13.02.15

Concurrent negotiation



(P) Sole Arbitrator: Role 5, SIAC 2010

[...] Should no agreement be reached, then the dispute shall be finally settled by arbitration upon the written request of either party hereto in accordance with the rules of conciliation and arbitration of the Singapore International Arbitration Center (SIAC) **by three arbitrators** in English language [...] (*Clause 16 of the First Shipment contract, orally imported in the Second Shipment contract*)

Expedited Arbitration: Art. 5 SIAC Rules

5.2 Where a party has **filed an application** with the Registrar under Rule 5.1, and where the **President determines**, after considering the views of the parties, and having regard to the circumstances of the case, that the arbitral proceedings shall be conducted in accordance with the **Expedited Procedure**, the following procedure shall apply:

...

b. The case shall be referred to a **sole arbitrator**, unless the President determines otherwise

Expedited Arbitration: Art. 5 SIAC Rules

5.3 By agreeing to arbitration under these Rules, the parties agree that, where arbitral proceedings are conducted in accordance with the Expedited Procedure under this Rule 5, the rules and procedures set forth in Rule 5.2 shall apply **even in cases where the arbitration agreement** contains contrary terms.

High Court Singapore

AQZ vs. ARA [2015] SGHC 49, 13.02.15

Concurrent negotiation

ARA
(Seller)

written contract: 1 shipment



oral agreement: 2 shipments

AQZ
(Buyer)

award

- 1) jurisdiction
- 2) supplier liable

application to
set aside

- 1) lack of jurisdiction
- 2) procedure
 - a) new rules
 - b) sole arbitrator

Art. III NYC

- Recognition and Enforcement of Arbitral Awards -

Each Contracting State shall **recognize arbitral awards** as binding and **enforce them** in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles.

Art. IV:

To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

- (a) The duly authenticated original award or a duly certified copy thereof;
- (b) The original agreement referred to in article II or a duly certified copy thereof.

Art. V NYC

- Recognition and Enforcement of Arbitral Awards -

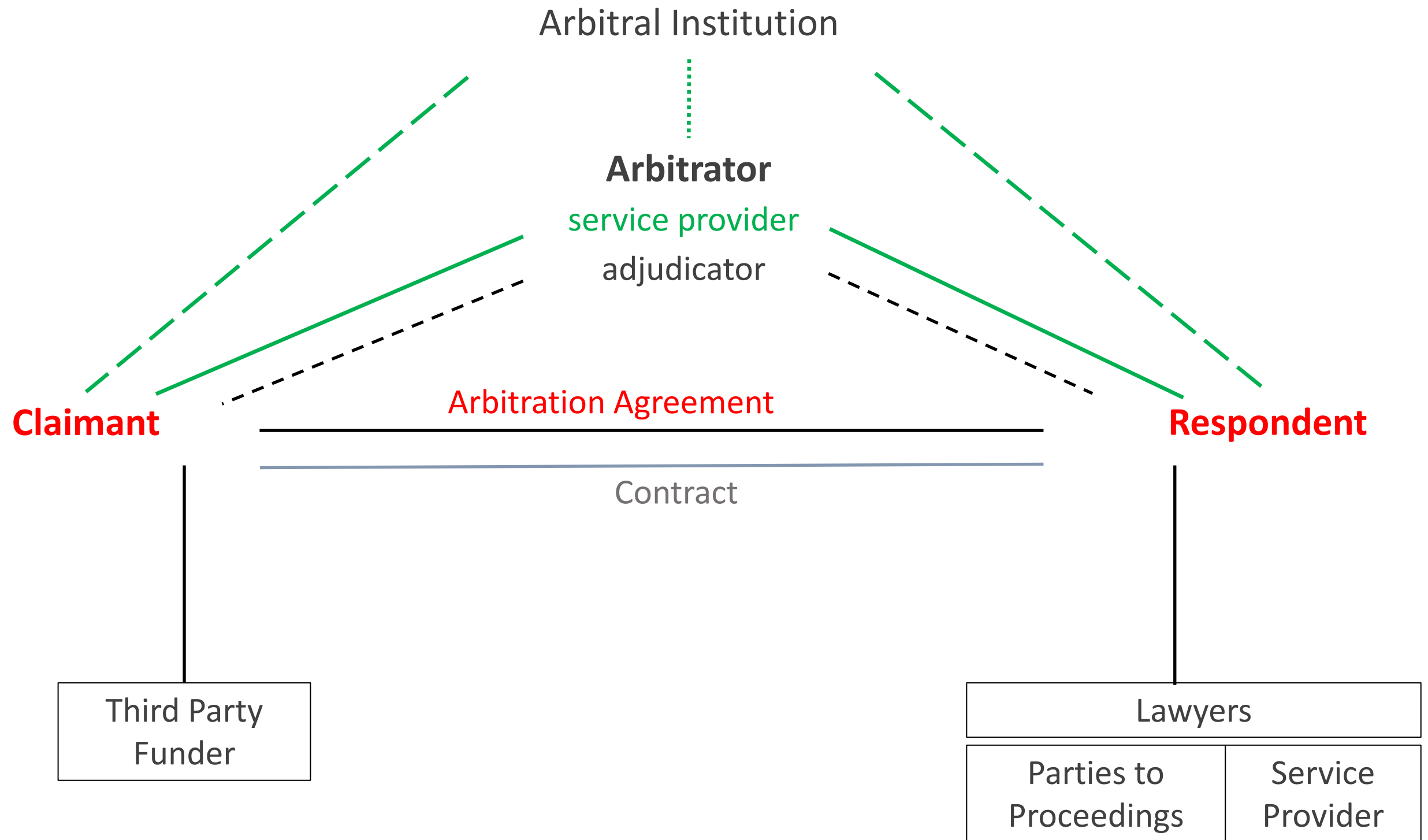
1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

...

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the **agreement of the parties**, or, failing such agreement, was not in accordance with the **law of the country** where the **arbitration took place**; or

Contractual Relations

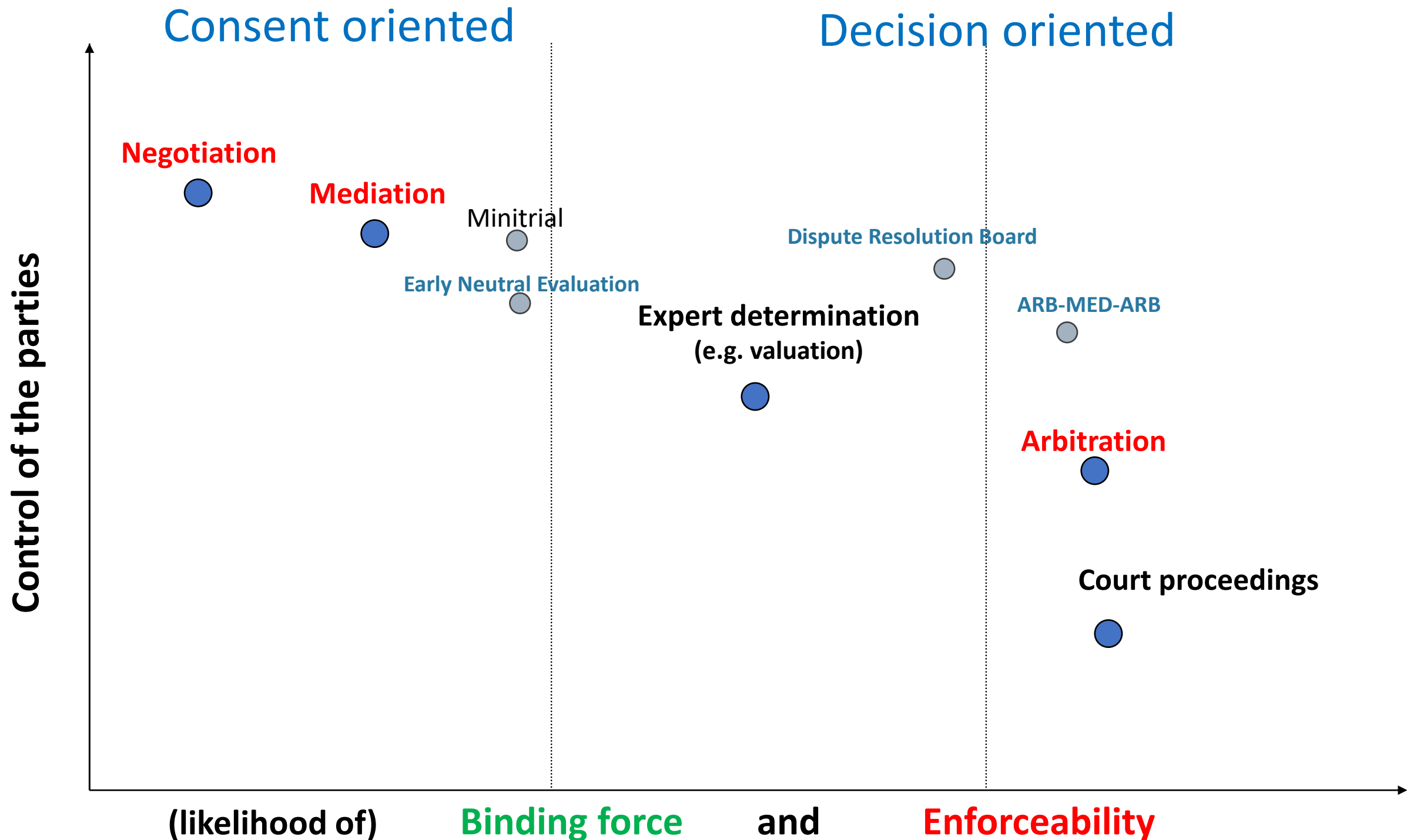
(in institutional arbitration)



Nijinsky – „Legendary originator“ of the problem for 26th Vis Moot (HKIAC)

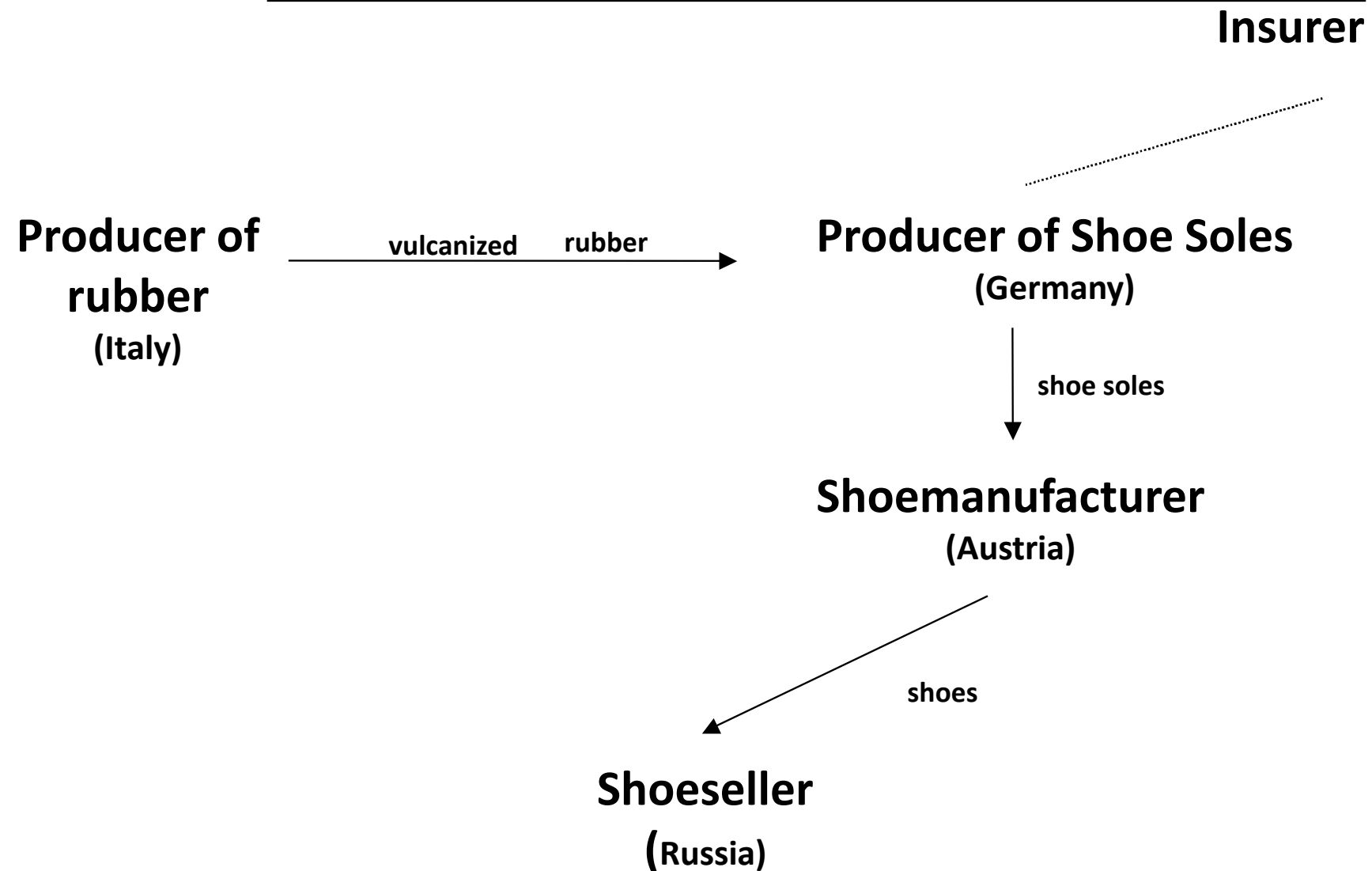


Dispute Resolution Mechanisms

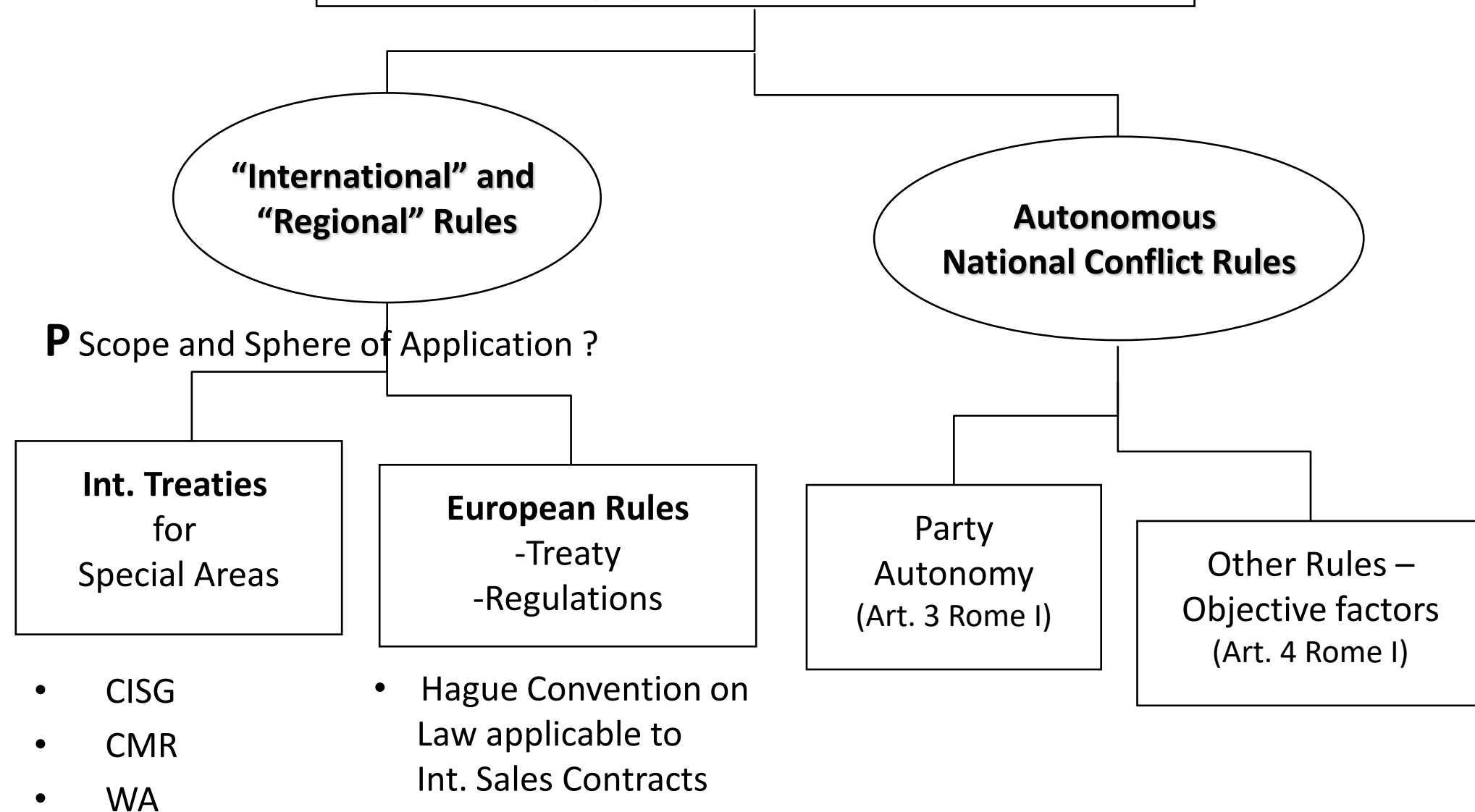


Typical International Sales Transaction

(Based on *Atlarex v. Rheinland Versicherung*)



Rules for Determination of Applicable Law



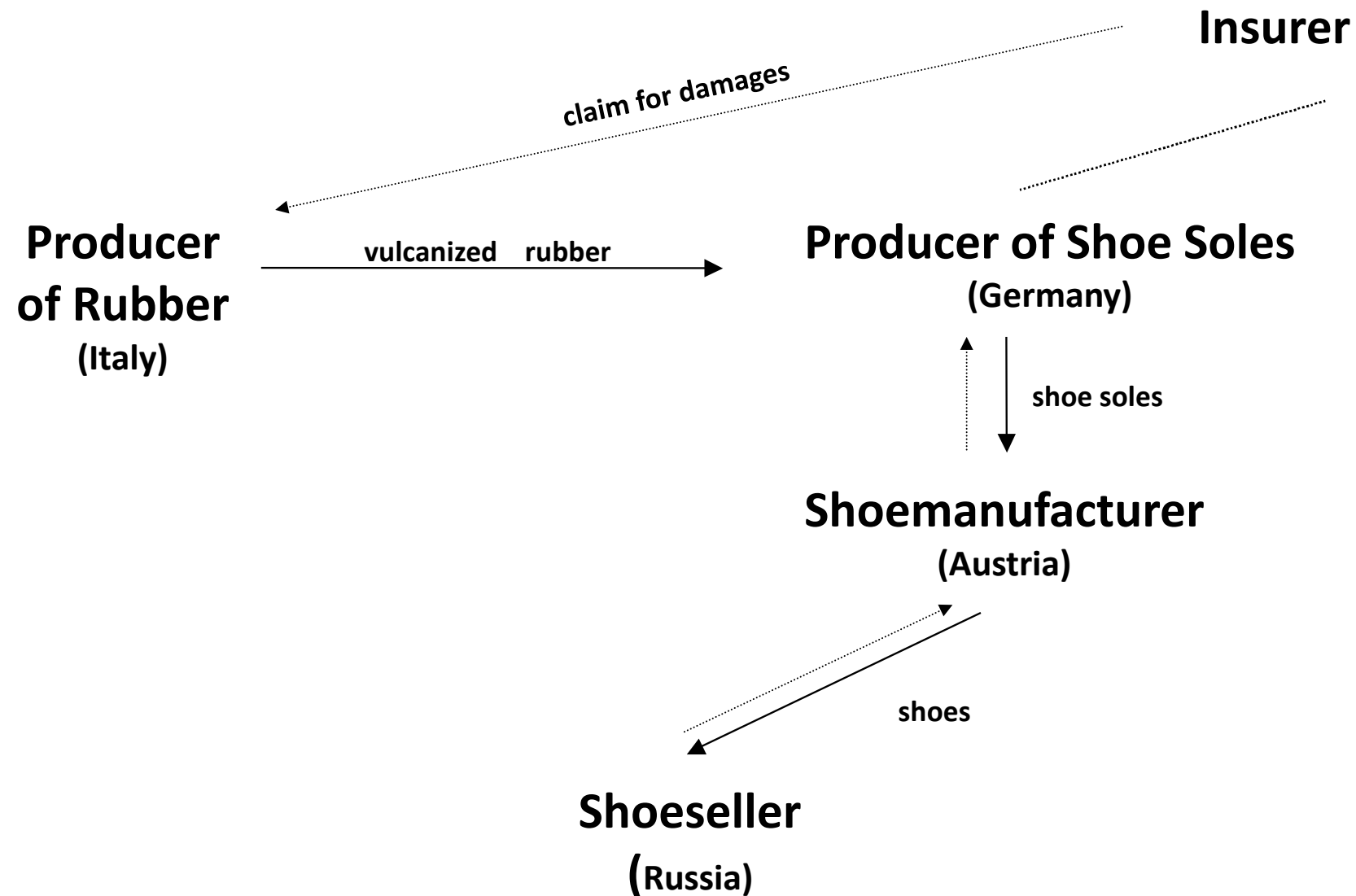
Choice of Law and Court Clauses

No contract of this kind is complete without a clause which identifies the law to be applied and the methods to be used for the determination of disputes. Its purpose is to avoid the expense and delay of having to argue about these matters later. It is the kind of clause to which ordinary businessmen readily give their agreement so long as its general meaning is clear. They are unlikely to trouble themselves too much about its precise language or to wish to explore the way it has been interpreted in the numerous authorities, not all of which speak with one voice.

House of Lords, *Fiona Trust Holding Corporation & Ors v. Yuri Privalov and Others*, 17 October 2007 [2007] UKHL 40, para 41

Typical International Sales Transaction

(Based on Tribunale di Vigevano:
Rheinland Versicherungen vs Atlarex)



History (I)

- 1920th: Start of Discussions by Ernst Rabel
- 1930: Start of the first works by Unidroit
- 1936: “Das Recht des Warenkaufs (I)” by Rabel
- 1951: Discussion of 1939 draft at Hague Conference - redraft
- 1956: Resubmission and corrections resulting in draft of 1963
- 1964: Hague Conferences (28 participants)
 - Uniform Law for the International Sale of Goods (ULIS)
 - Uniform Law on the Formation of Contracts for the International Sales of goods

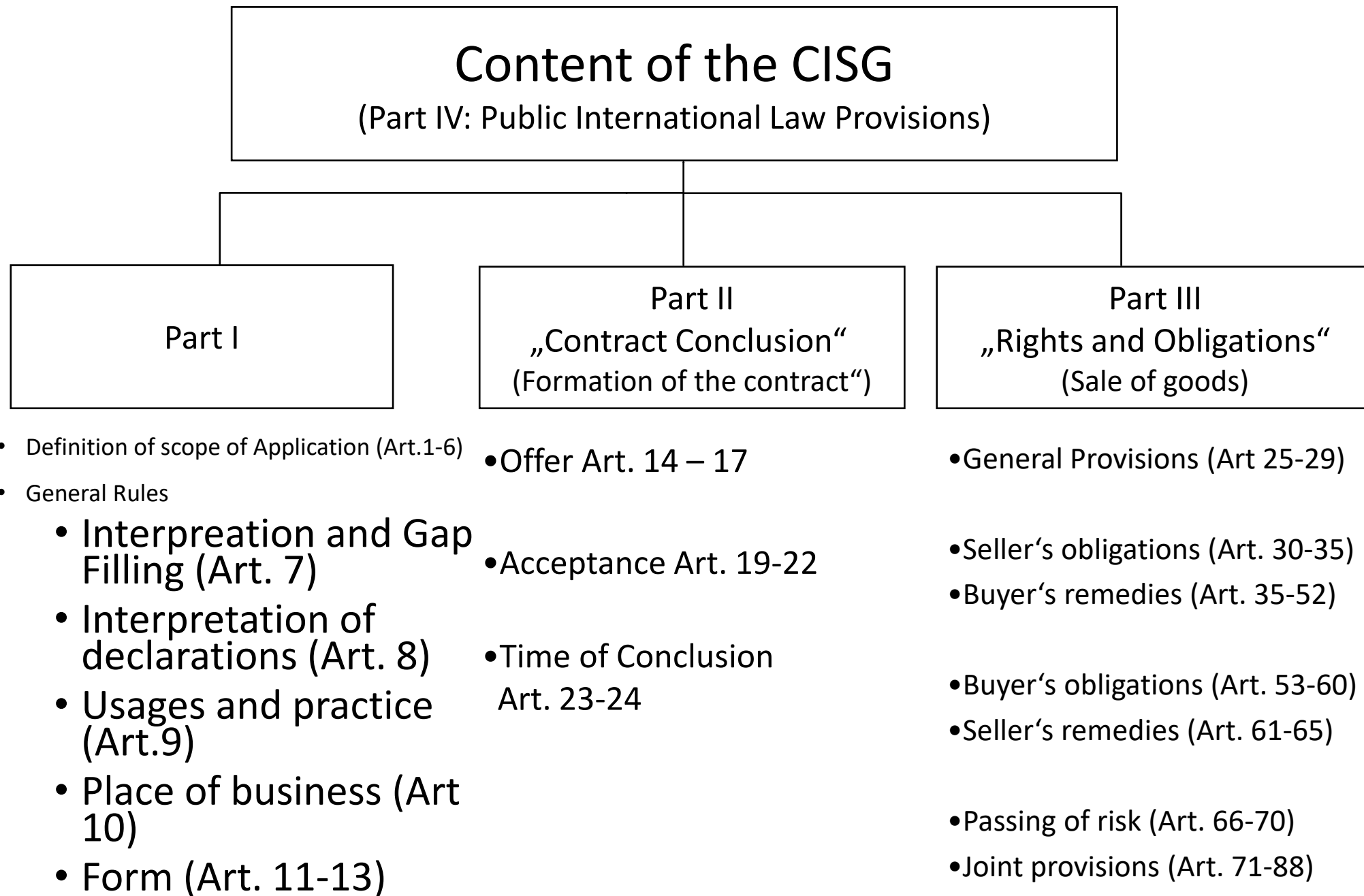
History (II)

- 1966: Creation of UNCITRAL
- 1968: Start of discussions on an worldwide acceptable Convention within UNCITRAL framework
- 1977/78: First Drafts
- 1980: Conference in Vienna – 11.4.1980 Signature of Convention by 62 participating states
- Dec. 1987: Ratification by sufficient number of state for entry into force

Purpose of the CISG

"Sales transactions that cross international boundaries are **subject to legal uncertainty** -- doubt as to which legal system will apply and the difficulty of coping with unfamiliar foreign law. The sales contract may specify which law will apply, but our sellers and buyers cannot expect that foreign trading partners will always agree on the applicability of United States law. ... The Convention's approach provides an effective solution for this difficult problem. When a contract for an international sale of goods does not make clear what rule of law applies, the Convention provides **uniform rules** to govern the questions that arise in making and performance of the contract."

Secretary of State's George Shultz, Letter of Submittal of the CISG to the President at 70-72.



Advantages

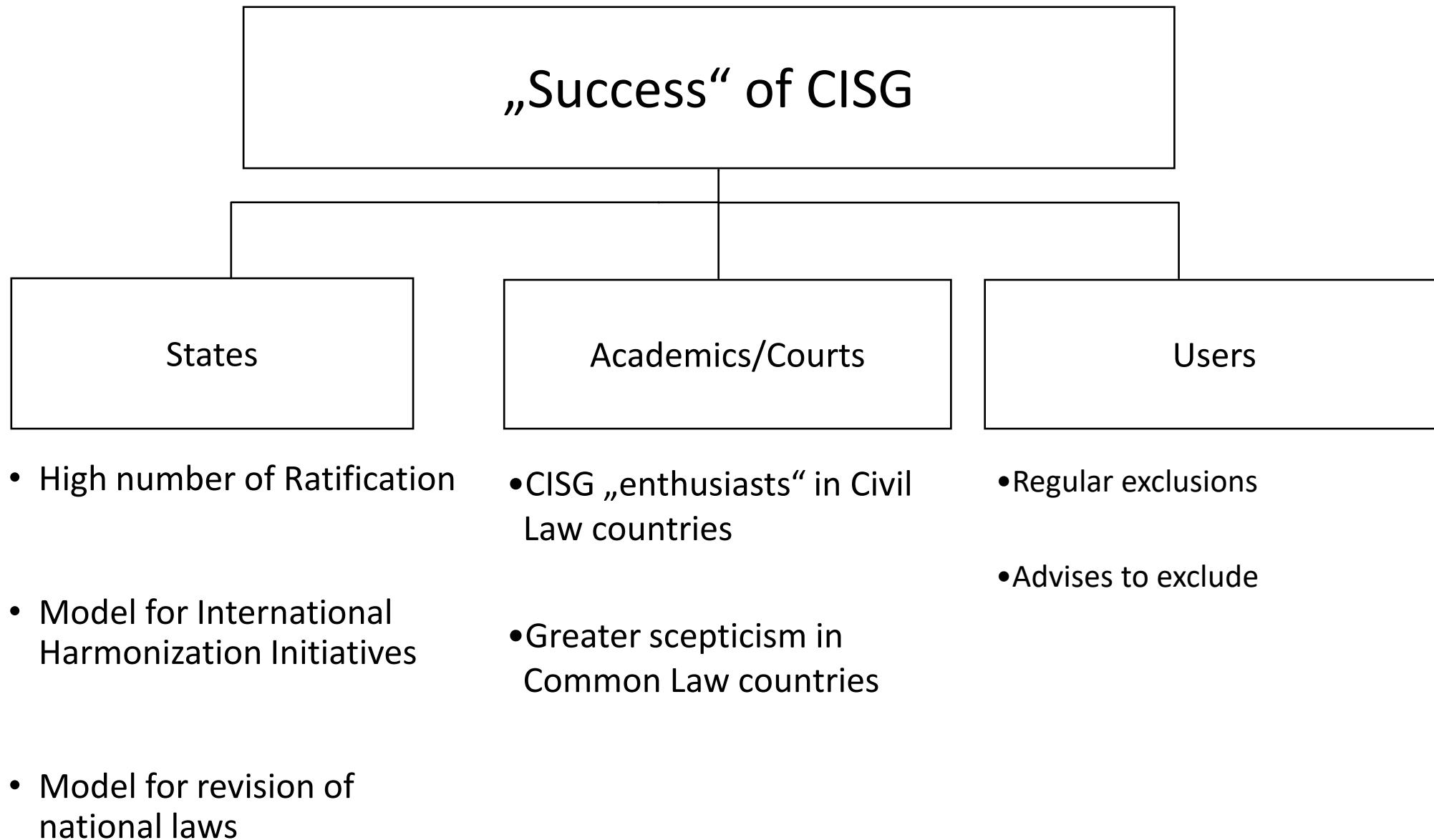
- Uniform law governing all transactions
- No conflict of laws problems
- Part of national law: no need to prove
- Certainty through considerable case law and writing freely accessible
- Law particularly drafted for international sales.

Reduction of Transaction Costs?

„Many students of international commercial law celebrate the benefits of uniform law in reducing transaction costs by avoiding the need for each party to understand the law of a counterparty’s jurisdiction. (...)

Uniformity itself, however, does not perform that function. Whether or not a particular body of uniform law reduces transaction costs depends on whether the default rules it creates reflect the risk allocation to which the parties otherwise would have bargained. If they do not, then the parties will have to invest additional transaction costs in negotiating around the defaults.“

(Gilette/Walt, The UN Convention on Contracts for the International Sale of Goods – Theory and Practice, 2nd ed., 2016)



Relevance for the Vis Moot

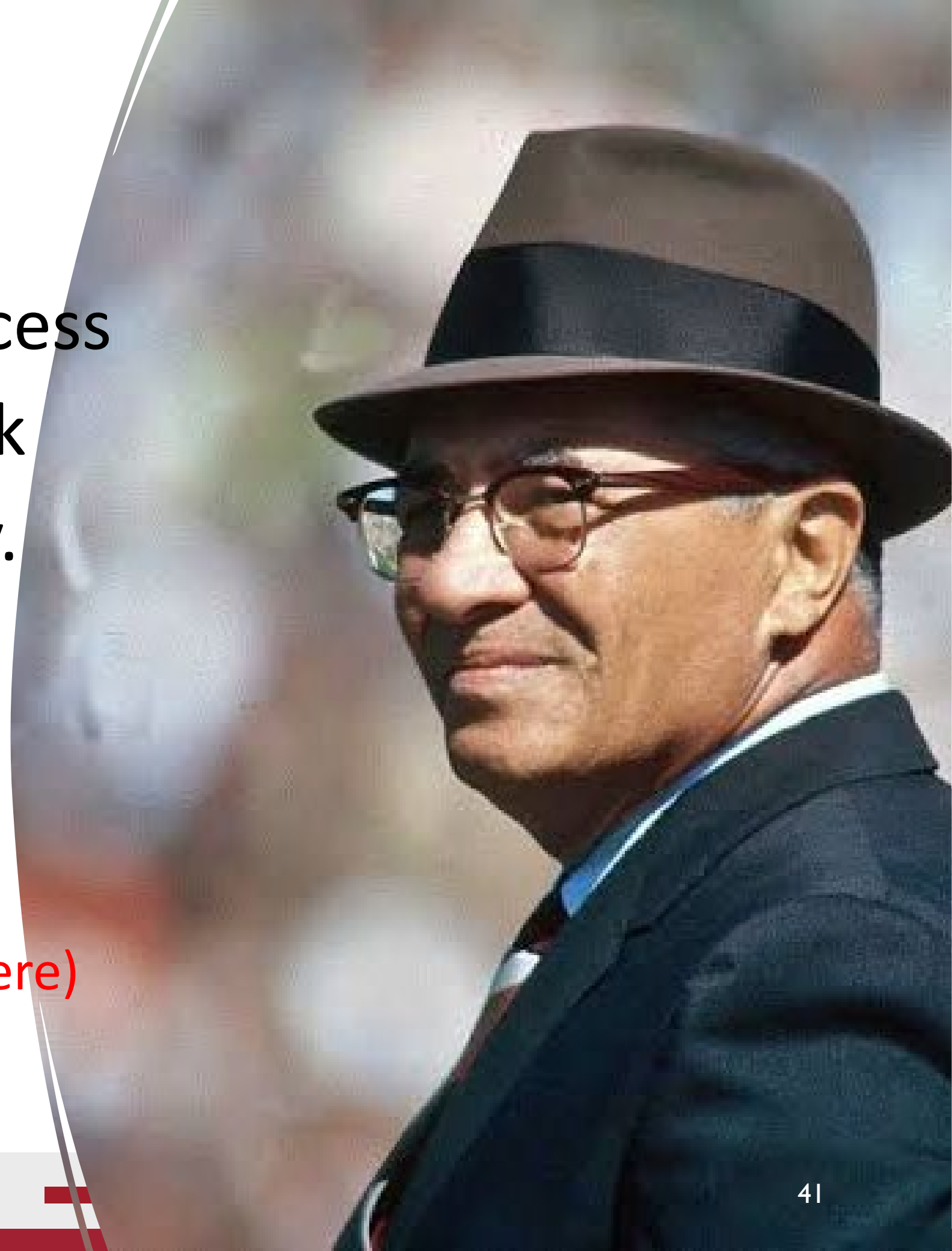
???

... but I am happy to answer any other questions

The only place success
comes before work
is in the dictionary.

Vince Lombardi

= prepare for Vienna
(... and enjoy the time there)

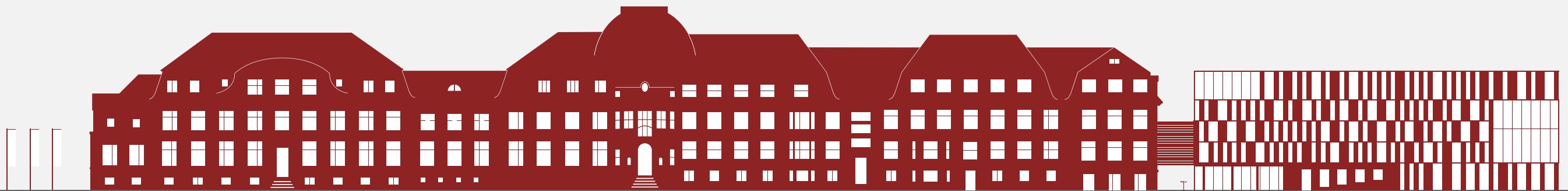




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THANK YOU FOR YOUR ATTENTION!

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