

# Inter-State Arbitration

## Class 6

London Summer Arbitration School 2025  
Wednesday, 18 June 2025

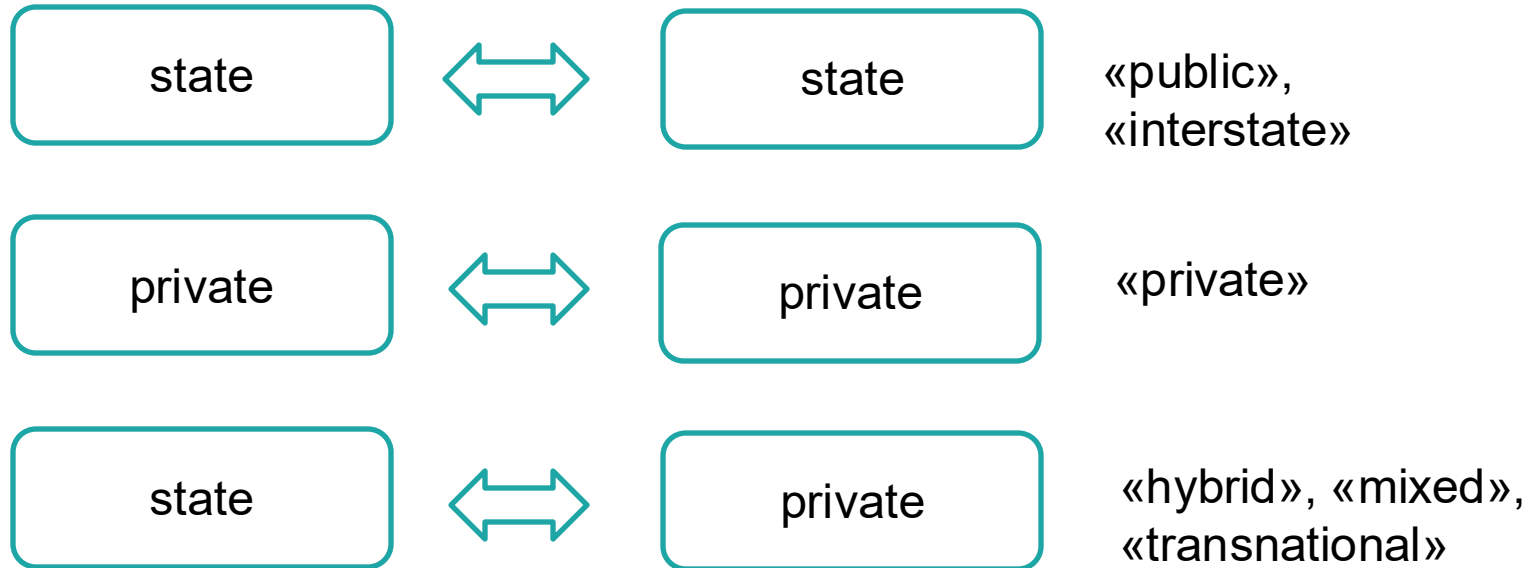
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# **Parties to a dispute**

*What are the possible constellations?*

# Parties to a dispute

## *Possible constellations*



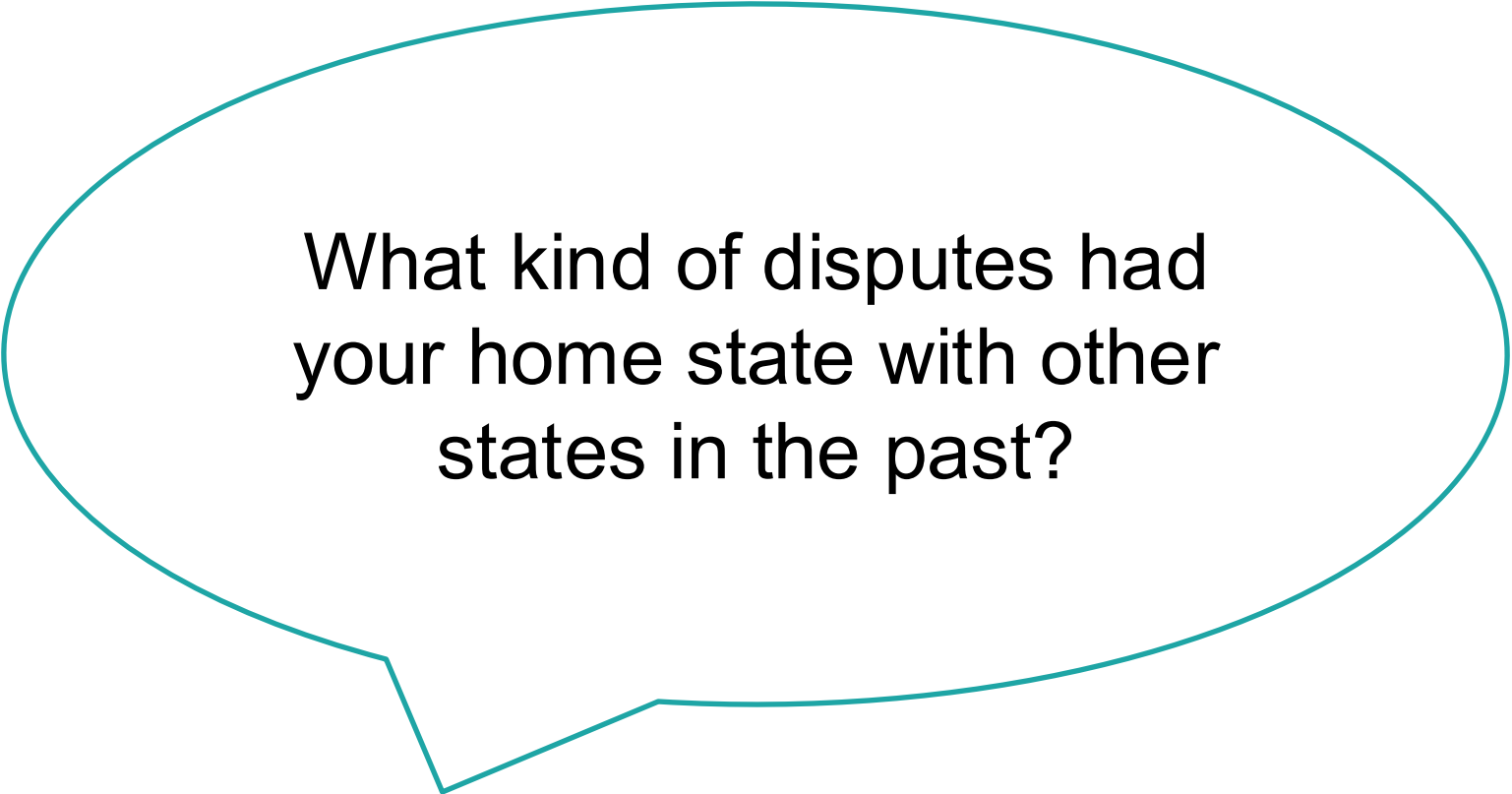
reality is even more complex

# **Disputes between States**

## *About what?*

# **Disputes between States**

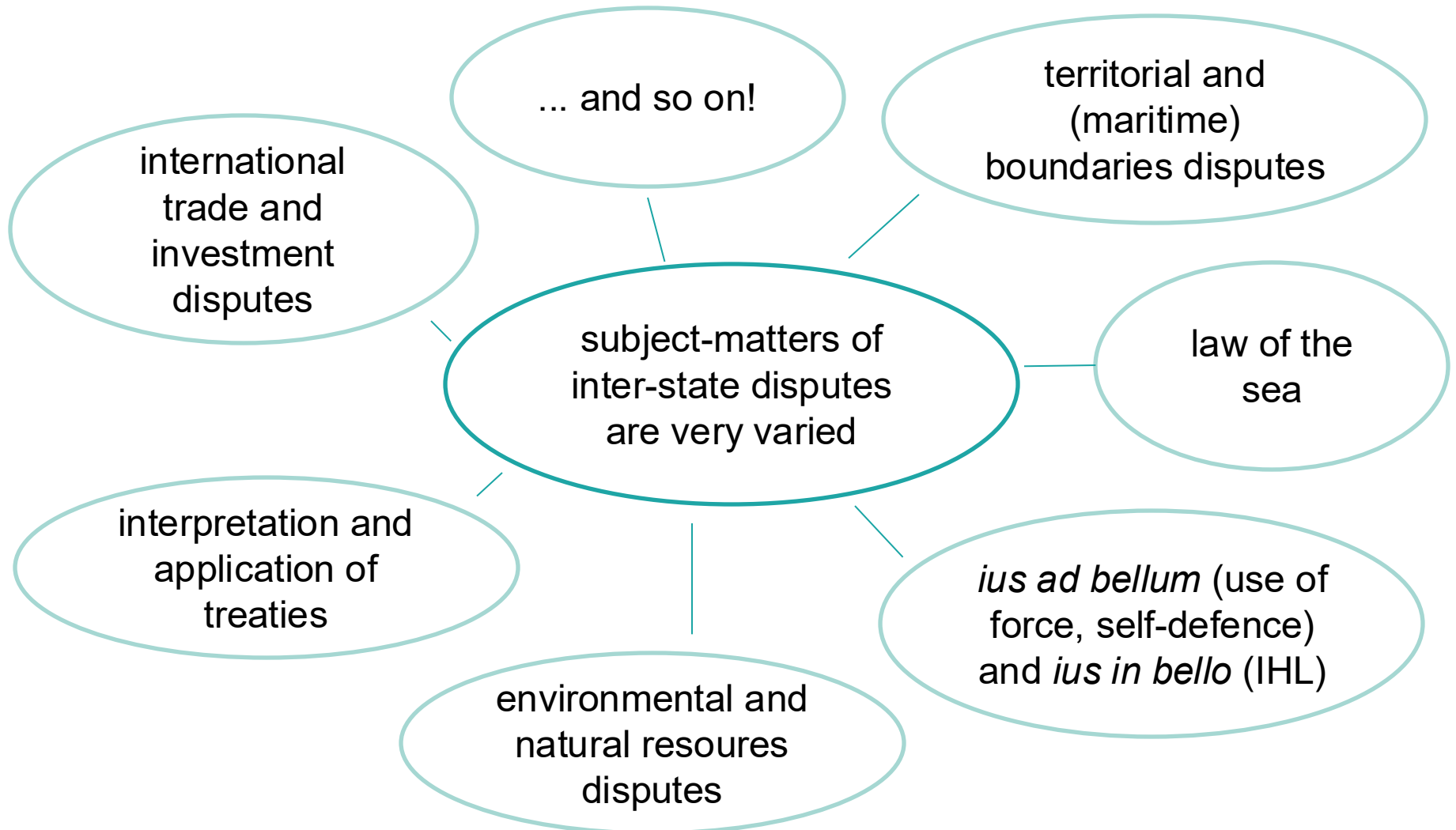
*Possible subject-matters*



What kind of disputes had your home state with other states in the past?

# Disputes between States

## *Possible subject-matters*



# **Settlement of inter-state disputes**

*Are states free in how they settle a dispute?*

# Settlement of inter-state disputes

*Starting point: recourse to armed force not prohibited*

## Historically

- no prohibition to use force
  - right to wage war (*liberum ius ad bellum*)
  - Clausewitz: “War is the continuation of politics by other means.”
- no obligation to settle disputes peacefully
  - but “diplomatic arbitration” to resolve disputes between states
  - some arbitrations prior to the 1899 Hague Peace Conference

# Settlement of inter-state disputes

*Turning point: 1899/1907 Hague Conventions*

## 1899 Hague Convention, Preamble

Animated by a strong desire to work for the maintenance of general peace;

Resolved to promote **by their best efforts** the **friendly settlement** of international disputes;

Recognizing the solidarity uniting the members of the society of civilized nations;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a tribunal of arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

## 1907 Hague Convention, Preamble

same wording, but “by all the efforts in their power”

# Settlement of inter-state disputes

*Turning point: 1899/1907 Hague Conventions*

## 1899 Hague Convention

TITLE I. ON THE MAINTENANCE OF THE GENERAL PEACE

### *Article 1*

With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences.

## 1907 Hague Convention, Article 1

same wording

# Settlement of inter-state disputes

## *Turning point: 1899/1907 Hague Conventions*

### **1899 Hague Convention**

#### *Article 16*

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

### **1907 Hague Convention**

#### *Article 38*

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Contracting Powers as the most effective, and, at the same time, the most equitable means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the Contracting Powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit.

# Settlement of inter-state disputes

*Turning point: 1899/1907 Hague Conventions*



# Settlement of inter-state disputes

*End point: use of force prohibition, obligation to settle peacefully*

## Toward a prohibition on the use of force

- Briand-Kellog Pact 1928
- named after French and US Foreign Ministers
- only two substantive provisions, but
  - important milestone in evolution towards prohibition on the use of force
  - continuation of efforts that continued with 1899/1907 Hague Conventions

## ARTICLE I

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.

## ARTICLE II

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

# Settlement of inter-state disputes

*End point: use of force prohibition, obligation to settle peacefully*

## Prohibition on the use of force

- UN Charter 1945
  - Art. 2(4) UN-Charter: prohibition on the use of force between States
  - Art. 33 UN-Charter: obligation to settle inter-state disputes peacefully
- Customary international law

# Settlement of inter-state disputes

*End point: use of force prohibition, obligation to settle peacefully*

## United Nations Charter

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### Chapter I: Purposes and Principles

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#### Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

# Settlement of inter-state disputes

*End point: use of force prohibition, obligation to settle peacefully*

## United Nations Charter

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### Chapter VI: Pacific Settlement of Disputes

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#### Article 33

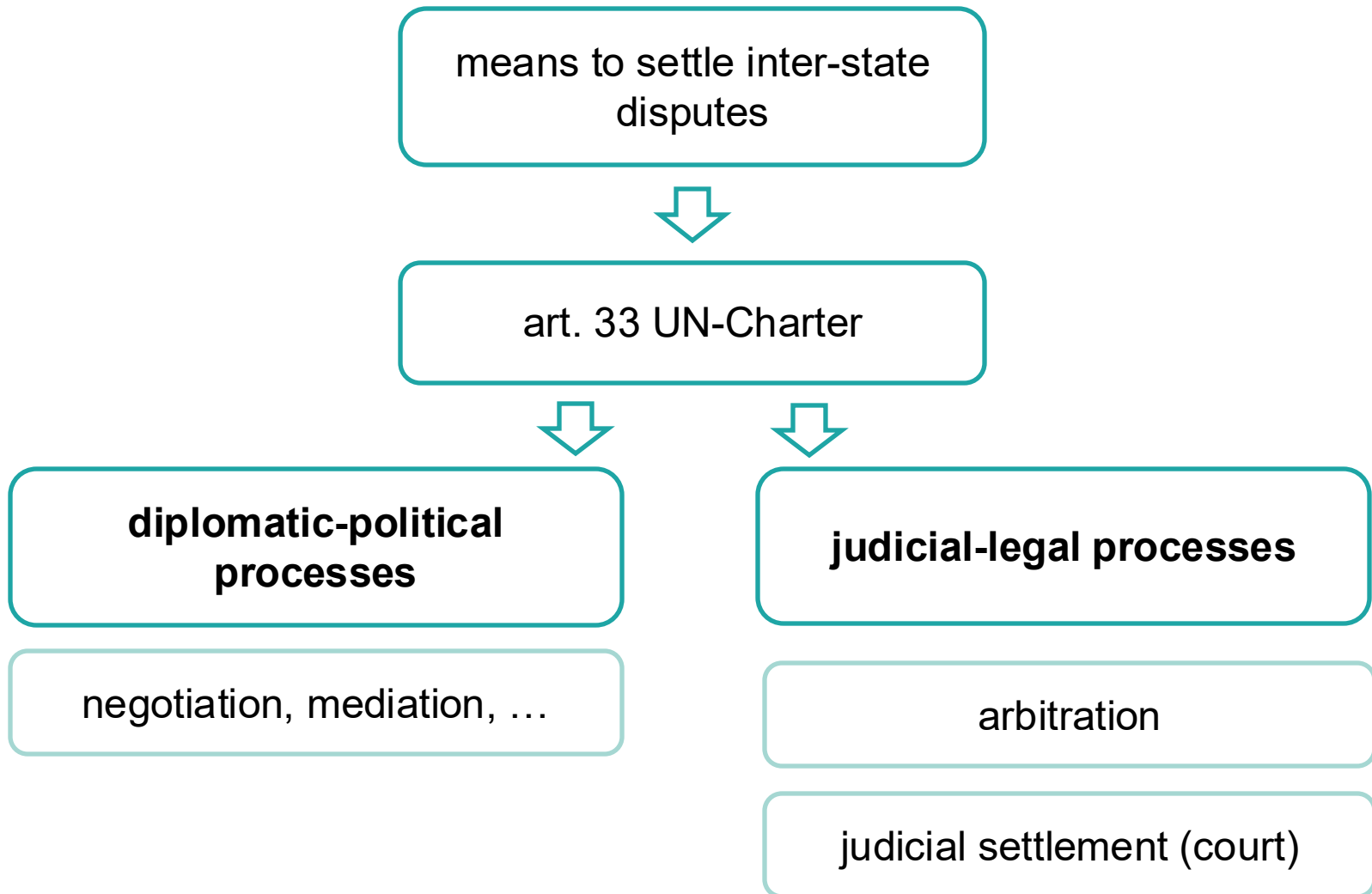
1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

# **Peaceful settlement of disputes**

## *Comparison of the various means*

# Various means to settle disputes peacefully

*Two broad categories*



# Various means to settle disputes peacefully

## *Two broad categories*

### **Diplomatic means** (selection)

- negotiation
  - communication between parties without involvement of a third party
  - with the aim of finding a consensual solution
  - main means of resolving inter-state disputes
- mediation
  - involvement of a third party (with consent of parties)
  - to help the disputing parties to reach agreement
- good offices (narrow understanding)
  - involvement of a third party (with consent of parties)
  - modest role
    - establish contact between disputing parties (“shuttle diplomacy”)
    - encourage to resume negotiations
    - help to get together

# Various means to settle disputes peacefully

## *Two broad categories*

### **Diplomatic means** (selection)

- inquiry (fact finding)
  - process of impartial investigation and establishment of facts
  - often precondition for reaching solution
- conciliation
  - panel of independent personalities, chosen by or with participation of parties
  - examines facts and law applicable to facts
  - drafts recommendations
  - parties are free to accept / refuse them
- inquiry / conciliation = diplomatic-political means
  - formal proceedings, evidence, hearings, reasoned conclusions
  - but parties can accept, reject, modify their conclusions (reports)
  - preface of further rounds of negotiation / political decision-making

# **Various means to settle disputes peacefully**

## *Two broad categories*

### **Characteristics of diplomatic means**

- cooperative processes
- not legal processes
  - extra-legal arguments can be made
  - extra-legal interests can be asserted
- no obligation to execute proposals for settlement
  - free to accept / reject
  - in the exercise of political discretion

# Various means to settle disputes peacefully

## *Two broad categories*

### **Characteristics of judicial-legal processes** (arbitration, judicial settlement)

- processes based exclusively on the application of legal principles
  - no extra-legal arguments / interests
  - distinguishes them from negotiation, mediation, inquiry
- third party renders a binding decision
  - obligation to accept and implement
  - distinguishes them from findings in inquiry and conciliation

# Various means to settle disputes peacefully

## *Comparing arbitration – judicial settlement*

### Commonalities

- pacific settlement of disputes
- in application of legal principles
- by third parties empowered to render binding decisions
- based on consent
  - no dispute settlement without the consent of the State
  - post-dispute consent (*compromis*)
  - pre-dispute consent
    - clauses in treaties
    - in which states consents to resolution of dispute through court / arbitration

# Various means to settle disputes peacefully

## *Comparing arbitration – judicial settlement*

### Main differences

- character of tribunal to which parties submit their dispute
- arbitration
  - *ad hoc* tribunals
  - created to resolve a single dispute / class of related disputes
  - staffed by arbitrators selected by/with the participation of parties
  - often discretion in choosing the applicable law
- international courts/tribunals
  - permanent tribunals
  - created by multilateral treaties
  - staffed by judges elected by States party to the treaty
  - applying a pre-defined set of legal rules
  - e.g. ICJ, ITLOS, European Court of Justice, ...

# **Various means to settle disputes peacefully**

## *Comparing arbitration – judicial settlement*

### **1899 Hague Convention**

#### **Chapter I. On the System of Arbitration**

##### *Article 15*

International arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law.

### **1907 Hague Convention**

#### **Chapter I. The System of Arbitration**

##### *Article 37*

International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the Award.

# **Various means to settle disputes peacefully**

## *Comparing arbitration – judicial settlement*

«[...] arbitration represents a consensual procedure for the final settlement of disputes [...] on the basis of law by adjudicators of their own choosing.»

Charles H Brower, «Arbitration»,  
Max Planck Encyclopedias of International Law  
February 2007, para 1

# **The Permanent Court of Arbitration**

*Not the only, but the most prominent option!*

# **Permanent Court of Arbitration (PCA)**

*The most prominent, but not the only option!*

## **Establishment of PCA**

- established by Hague Convention 1899
- first permanent intergovernmental organization
  - to provide a forum for the resolution of international disputes (not a court!)
  - through arbitration and other peaceful means (mediation, conciliation, ...)

## **Activity of PCA**

- 1900-1914: 15 arbitrations, “golden age” of inter-state arbitration
- slowing down: outbreak WW I, creation of PCIJ
- further slowing down: outbreak WW II, creation of ICJ
- 1945-1990: 3 arbitrations only!
- after end of Cold War: renaissance of international arbitration
  - 2010-2020: more cases than in “golden age”
  - 2023 alone: 5 new inter-state arbitration commenced

# **Permanent Court of Arbitration (PCA)**

*The most prominent, but not the only option!*

## **Membership of PCA**

- 124 contracting parties
- across the globe
- notable gap: newly independent states (decolonization)
- but PCA can administer cases involving non-members

## **Administration of inter-state disputes**

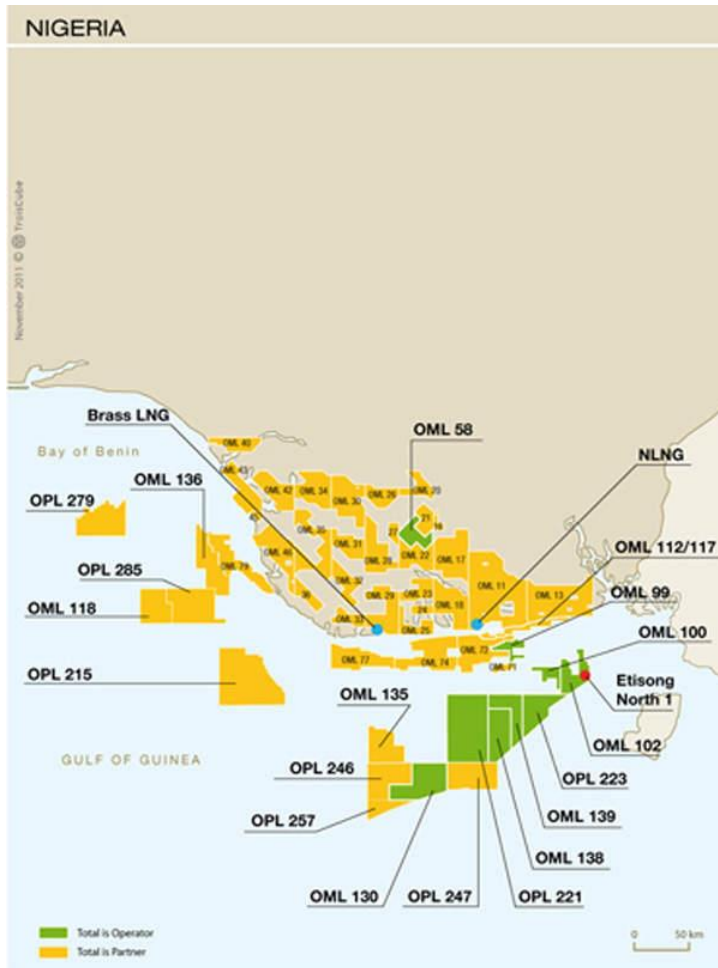
- states are free to opt for
  - other institutions than PCA to administer a dispute
  - *ad hoc* arbitration
- past two decades: near totality of cases administered by PCA
- UNCLOS: out of 15 cases, 14 administered by PCA

# **Various means to settle dispute**

## *Mutually exclusive? A case study*

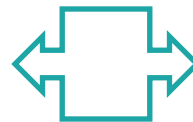
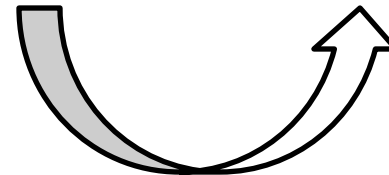
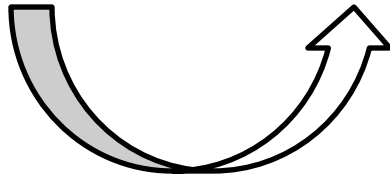
# Combination, linkages, interaction between means

*Case study: The M/T “San Padre Pio” case (CH v NIG)*



# Combination, linkages, interaction between means

*Case study: The M/T “San Padre Pio” case (CH v NIG)*



**CH: art. 58(1) UNCLOS**  
freedom of navigation  
**NIG has no jurisdiction**

**NIG: art. 56(1) UNCLOS**  
coastal state's sovereign rights  
over non-living resources  
**NIG has jurisdiction**

# **Combination, linkages, interaction between means**

*Case study: The M/T “San Padre Pio” case (CH v NIG)*

## **UN Convention on the Law of the Sea (UNCLOS)**

- “Constitution for the Oceans”
- regulates almost all aspects in relation to ocean / maritime activities
- 300 provisions
- innovative dispute settlement mechanism

## **Compulsory dispute settlement, but choice**

- states ratifying the UNCLOS consent to dispute settlement mechanism (DSM)
- compulsory DSM for all disputes relating to interpretation/application of UNCLOS
- but choice (“cafeteria approach”)
  - judicial settlement: ICJ or ITLOS
  - arbitration: Annex VII arbitration / Annex VIII arbitration
- see Art. 287 UNCLOS

*Article 287*  
*Choice of procedure*

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
- (b) the International Court of Justice;
- (c) an arbitral tribunal constituted in accordance with Annex VII;
- (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

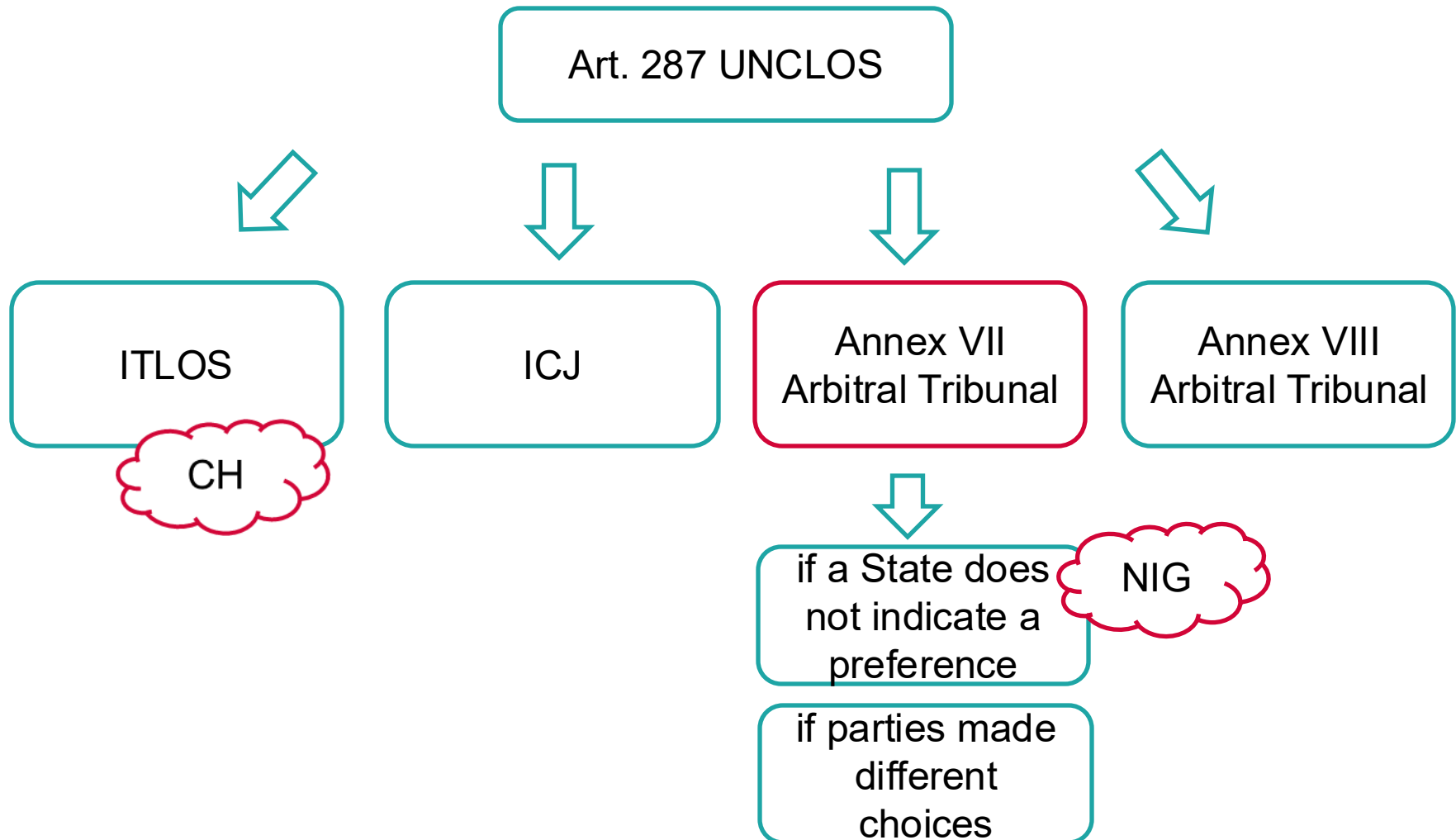
3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.

4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.

5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.

# Combination, linkages, interaction between means

*Case study: The M/T “San Padre Pio” case (CH v NIG)*



# Combination, linkages, interaction between means

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# **Combination, linkages, interaction between means**

*Case study: The M/T “San Padre Pio” case (CH v NIG)*

**Negotiations not leading to result:  
institution of arbitral proceeding by CH (flag State) against NIG**  
6 May 2019

3. Switzerland submitted the dispute to arbitration under Annex VII of UNCLOS by a Notification and Statement of Claim, conveyed to Nigeria by diplomatic Note dated 6 May 2019 (**‘Notification’**) and transmitted to Nigeria on that day. A copy of the Notification is annexed to this Request for the prescription of provisional measures (**‘Request’**).<sup>1</sup>

Source: “[www.itlos.org/fileadmin/itlos/documents/cases/27/published/C27\\_Request\\_Sw.pdf](http://www.itlos.org/fileadmin/itlos/documents/cases/27/published/C27_Request_Sw.pdf)”

# Combination, linkages, interaction between means

*Case study: The M/T “San Padre Pio” case (CH v NIG)*

**arbitration**  
proceedings  
initiated

**negotiations**

arrested



# Combination, linkages, interaction between means

*Case study: The M/T “San Padre Pio” case (CH v NIG)*

**Request for provisional measures by CH before ITLOS (court):  
in application of Art. 290(5) UNCLOS**

21 May 2019

## *Article 290 Provisional measures*

5. Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4.

# Combination, linkages, interaction between means

*Case study: The M/T “San Padre Pio” case (CH v NIG)*

**arbitration**  
proceedings  
initiated

provisional  
measures  
ITLOS  
(**court**)

**negotiations**

arrested



# **Combination, linkages, interaction between means**

## *Case study: The M/T “San Padre Pio” case (CH v NIG)*

Published on 6 July 2019

## **Nigeria ordered to release the San Padre Pio, its cargo and crew**

Bern, 6.7.2019 - In an order delivered today, the International Tribunal for the Law of the Sea in Hamburg has ruled that the San Padre Pio, a vessel flying the Swiss flag, and its crew and cargo must be released. Switzerland welcomes this decision. Nigeria has been holding the San Padre Pio, with its crew and cargo, for more than 17 months. The order largely upholds the request that Switzerland submitted to the tribunal.

[www.news.admin.ch/en/nsb?id=75742](http://www.news.admin.ch/en/nsb?id=75742)

against a financial  
security of USD 14  
Million

# **Combination, linkages, interaction between means**

*Case study: The M/T “San Padre Pio” case (CH v NIG)*

**Merits case still to be decided**

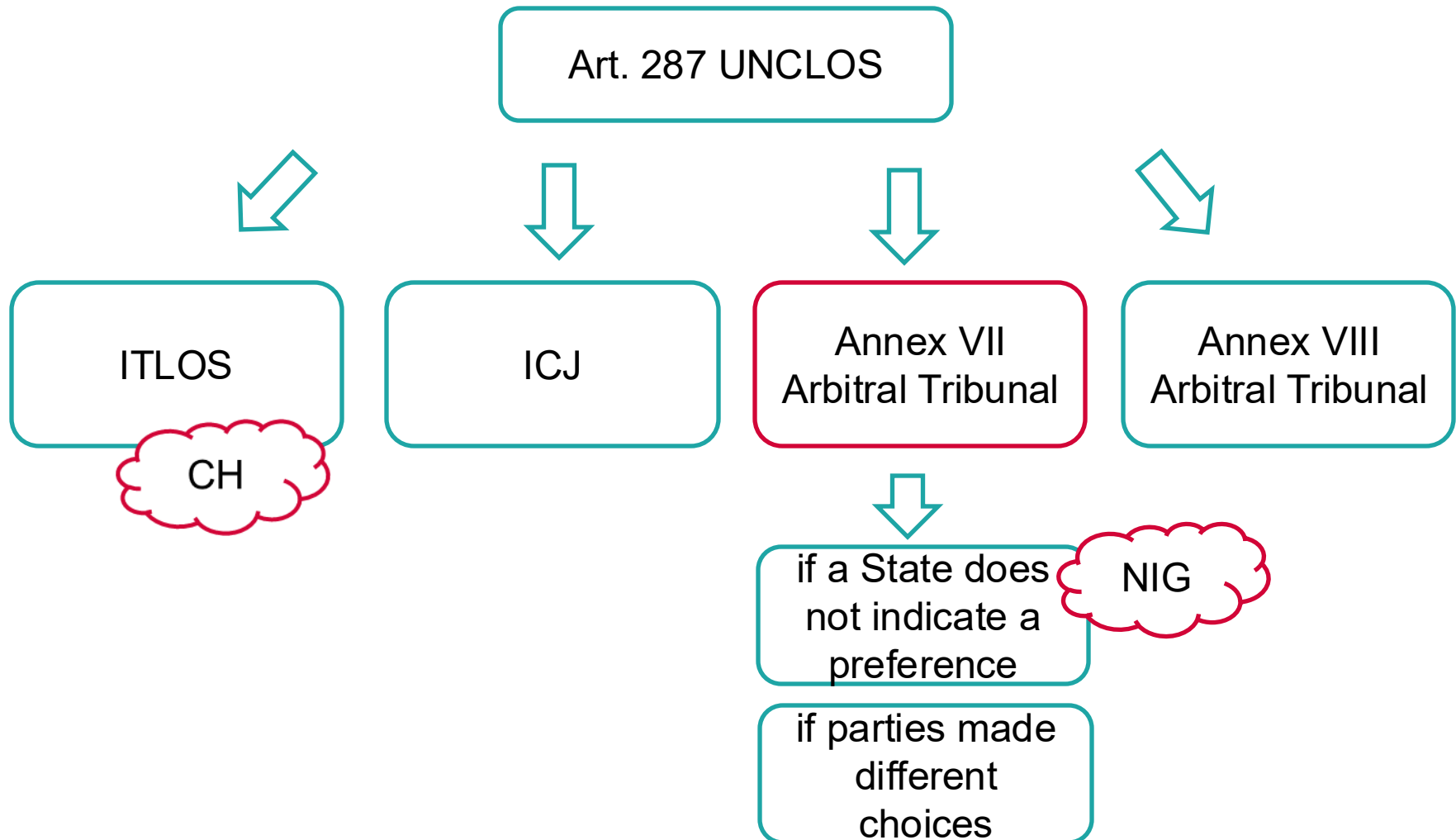
**Arbitration pending, but parties agree to submit dispute to ITLOS (court)**

21 December 2019



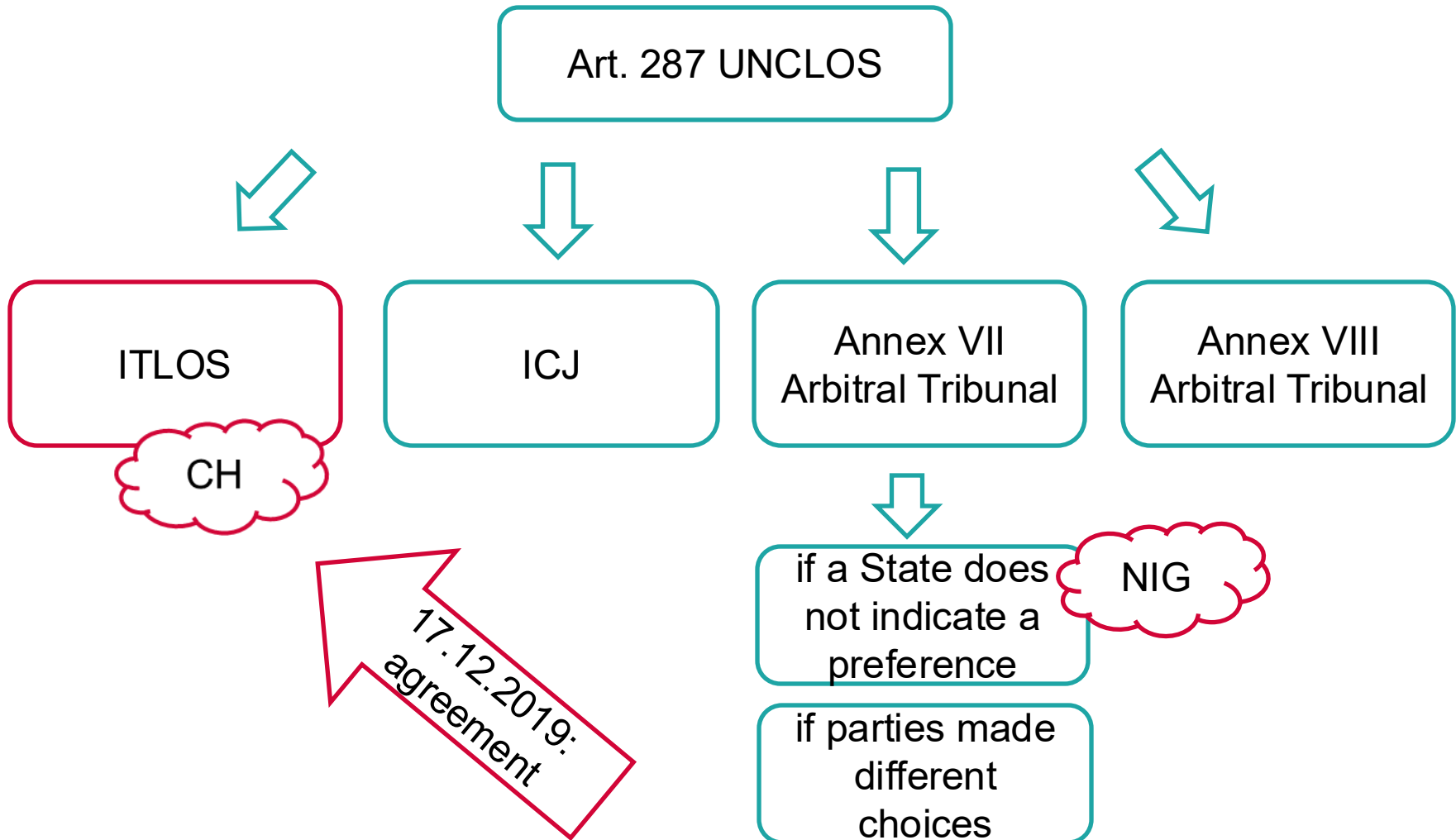
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# Combination, linkages, interaction between means

*Case study: The M/T “San Padre Pio” case (CH v NIG)*



**ITLOS/Press 298**  
**17 December 2019**



**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**  
**TRIBUNAL INTERNATIONAL DU DROIT DE LA MER**

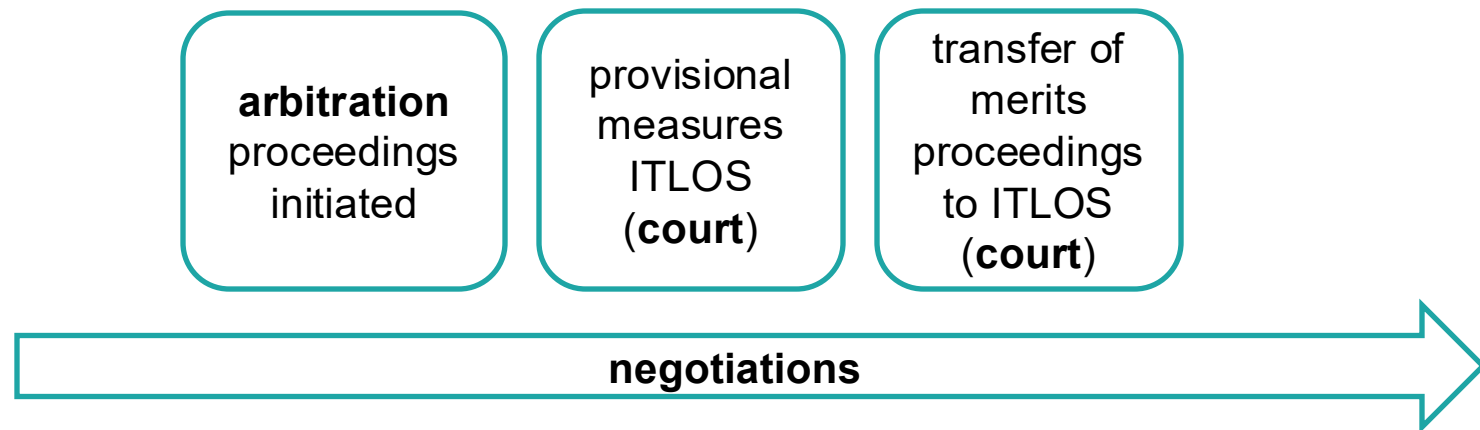
# **Press Release**

**THE SWISS CONFEDERATION AND THE FEDERAL REPUBLIC OF NIGERIA  
TRANSFER THEIR DISPUTE  
CONCERNING THE *M/T "SAN PADRE PIO"* TO THE TRIBUNAL**

On 17 December 2019, the Swiss Confederation and the Federal Republic of Nigeria transmitted a special agreement and notification to the International Tribunal for the Law of the Sea ("the Tribunal") to submit to the Tribunal their dispute concerning the arrest and detention of the *M/T "San Padre Pio"*, its crew and cargo. The *M/T "San Padre Pio"* is a motor tanker flying the flag of Switzerland, which was arrested by Nigerian authorities while it was allegedly engaged in ship-to-ship transfers of gasoil in Nigeria's exclusive economic zone.

# Combination, linkages, interaction between means

*Case study: The M/T “San Padre Pio” case (CH v NIG)*



# **Combination, linkages, interaction between means**

*Case study: The M/T “San Padre Pio” case (CH v NIG)*

**While merits case is pending, negotiations continue**  
Parties ask to postpone hearings at ITLOS

Published on 20 May 2021

## **Switzerland and Nigeria sign an agreement for the release of the vessel San Padre Pio**

Bern, 20.5.2021 - The FDFA and the Federal Ministry of Justice of Nigeria have signed an agreement under which Nigeria will immediately release the ship San Padre Pio. The vessel, which flies the Swiss flag, was detained in January 2018 in Nigeria's exclusive economic zone.

# **Combination, linkages, interaction between means**

## *Case study: The M/T “San Padre Pio” case (CH v NIG)*

Published on 11 December 2021

### **Thanks to Swiss diplomacy: The «San Padre Pio» has left Nigeria after almost four years**

Bern, 11.12.2021 - The Swiss-flagged San Padre Pio, which had been detained by Nigeria for nearly four years, left the country on 8 December 2021. The vessel is no longer in Nigeria's exclusive economic zone and is currently en route to Togo. Based on an agreement signed between Switzerland and Nigeria last May stipulating the release of the vessel, the departure of the San Padre Pio is a success story for Swiss diplomacy, which was closely involved in resolving the dispute between the two countries.

Source: <[www.news.admin.ch/en/nsb?id=86274](http://www.news.admin.ch/en/nsb?id=86274)>

# **Combination, linkages, interaction between means**

*Case study: The M/T “San Padre Pio” case (CH v NIG)*

**ITLOS/Press 318  
29 December 2021**



**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA  
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER**

## **Press Release**

***THE M/T "SAN PADRE PIO" (NO. 2) CASE (SWITZERLAND/NIGERIA)***

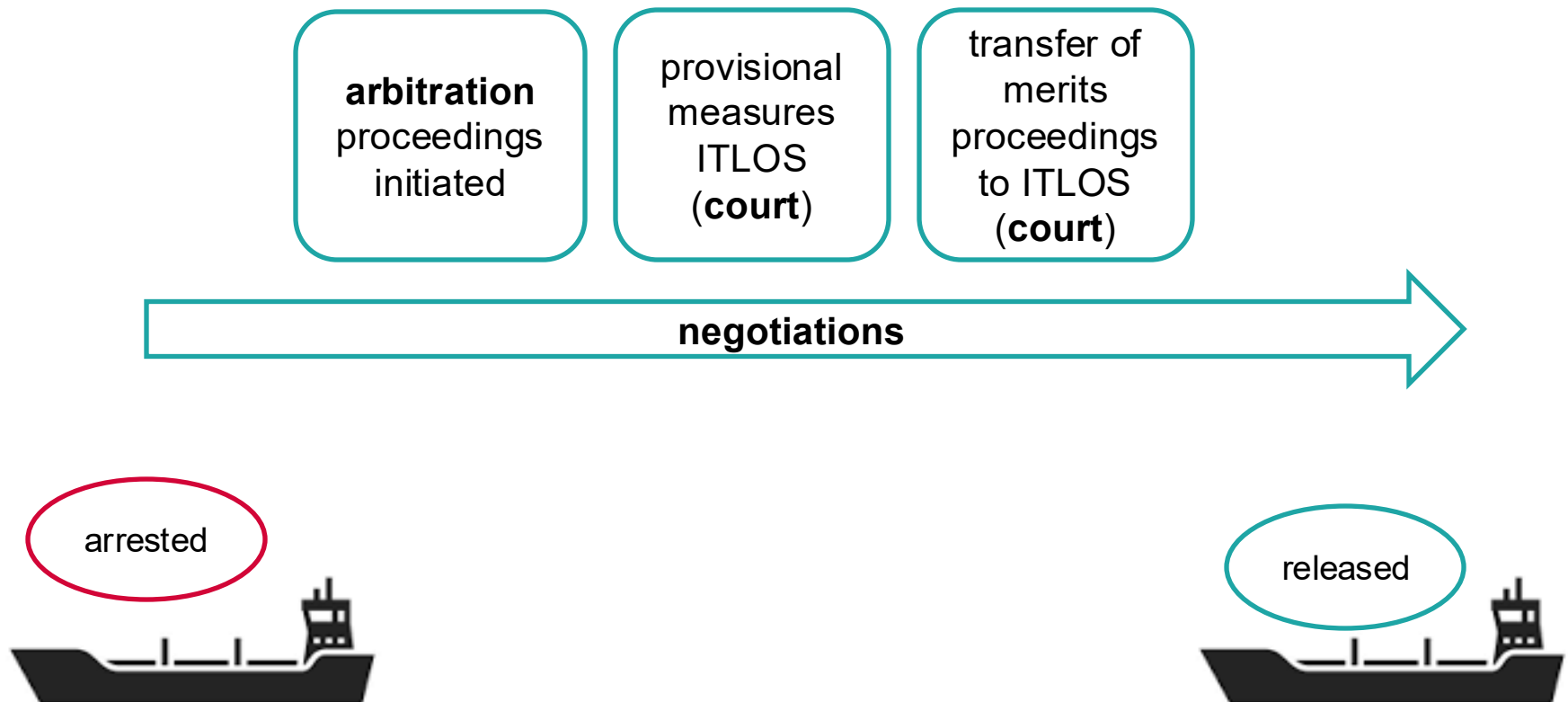
**CASE REMOVED FROM TRIBUNAL'S LIST**

On 29 December 2021, by Order of the President of the Tribunal, Judge Albert Hoffmann, the *M/T “San Padre Pio” (No. 2) Case* was removed from the Tribunal’s list of cases.

Source: <[www.itlos.org/fileadmin/itlos/documents/press\\_releases\\_english/PR\\_318\\_EN.pdf](http://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_318_EN.pdf)>

# Combination, linkages, interaction between means

*Case study: The M/T “San Padre Pio” case (CH v NIG)*



# Combination, linkages, interaction between means

*Case study: The M/T “San Padre Pio” case (CH v NIG)*

Basel professor acting as judge ad hoc to the International Tribunal for the Law of the Sea



Prof. Anna Petrig as judge ad hoc at the International Tribunal for the Law of the Sea in Hamburg. (Photo: ITLOS / University of Basel)



**Thank you**  
for your attention!

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