



**SILESIA
UNIVERSITY**

SCHOOL OF BUSINESS
ADMINISTRATION IN KARVINA

International Business Law

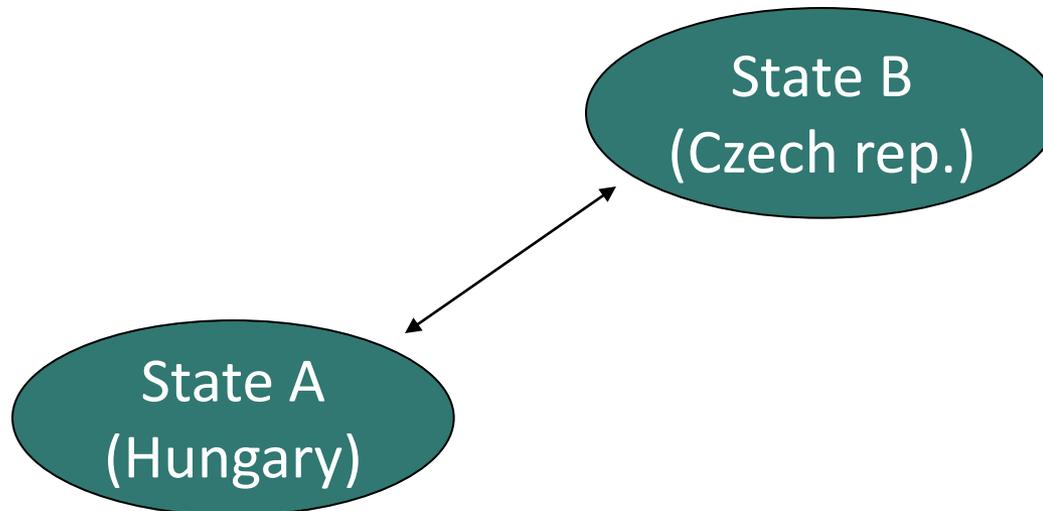
Sources of the international business law

Mgr. Tomáš Gongol, Ph.D.
International Business Law PEM/NPPMO

„International business activities“

commercial transaction

- the object of which is located in a foreign jurisdiction
- and where the parties are often, although not necessarily, located in different jurisdictions



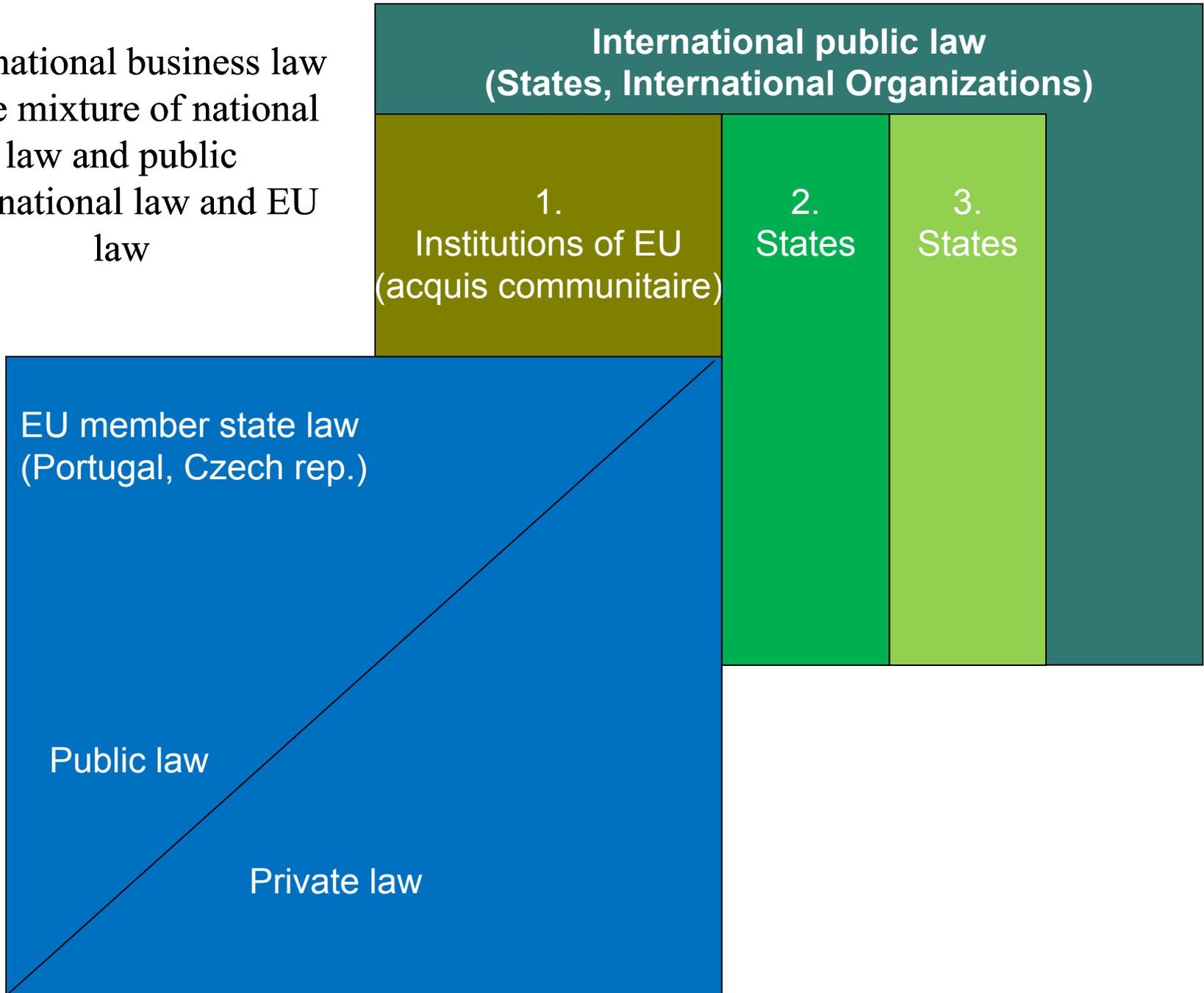
Legal regulation specialities of IBL (International Business Law)

- Globally there is **no uniform legal form** (just partial unification)
- There is need to adjust dissimilarities which international business has by special rules of **national law**
- Some rules are included in **international agreements or EU legislation**

Who participate in unification of IBL...

- International institute for the unification of private law (**UNIDROIT**)
 - an independent intergovernmental organisation with seat in Rome
 - aim – unification of private law – especially business law
 - E.g. International business law principle
- United nations commission on international trade law (**UNCITRAL**)
 - aim– elimination of barriers to trade

International business law is the mixture of national law and public international law and EU law



Sources of IBL

Fundamental:

- International agreements
- Secondary law of EU institutions
- National (domestic) law
 - Legislation– continental law system
 - + precedent– Anglo-American law system



Supporting: Created in practise in international business

- *Lex mercatoria* (Merchant law)
 - International usages and customs common to mechants
 - Form and sample agreements
 - Trading conditions
 - Delivery conditions
 - Principle of international agreements

International contracts

- **Multilateral**

- Establishing international institutions
 - United Nations, Bretton wood system
- Regulating business aspects
 - Elimination of trade barriers – customs and other foreign exchange measures , for example GATT
- Creating territorial units with specific regime of international business
 - Free trade area, customs union, common market , Internal single market
- Unifying procedural and substantive law rules
 - International contract of sale area, international transport area, immaterial assets area, arbitration area

- **Bilateral**

- Contracts on mutual support and protection of investments
- Contracts on prevention of double taxation

European Community regulations

Conflict and a procedural rule

- **Rome I** – regulation on the applicable law for contractual obligations
- **Rome II** – regulation on the applicable law for non-contractual obligations
- **Brussels I** – regulation on affiliation, recognition and enforcement of judgments with regards to commercial as well as individual issues

Other legal regulation about international business, e.g.:

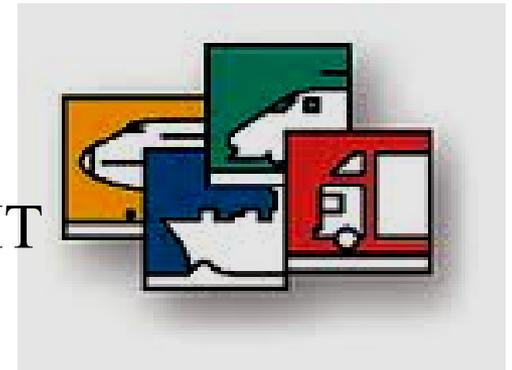
- Regulation establishing the Community Customs Code
- Various directives on import of goods to member countries

Supporting legal measures created in practise

- **Remove differences** between rules of law
- **Not generally applicable** rules
- Can be applied **only if one side of an agreement make them part of a contract**
i.e. Their application **depends on will of participants**

Types:

- Lex mercatoria
- International business conventions
- Form and model contracts
- Trade terms
- Commercial terms INCOTERMS
- International contracts principles UNIDROIT
- Principles of european contract law



Fundamental question: what is the source of law for specific contract?

1. Contracting parties can **choose** what will be the source for their contract
 - Freedom of parties is not limited anyhow, they can vote
 - Rule of law A or rule of law B
 - Rule of law of another country
 - non-state international trade rule of law (e.g. UNIDROIT)
 - „*This contract is governed by the domestic law of _____
(country)*“
2. If parties do not choose the source of their contract then **direct rule** is applied (if exists)
 - e.g. Vienna convention on international trade contracts
3. If parties do not choose the source of their contract and direct rule does not exist then conflict rule will be applied
 - in EU: Regulation Rome I – on the law applicable in contractual relations

CHOICE OF LAW

YES

NO

**CZECH LEGAL SYSTEM
POLISH LEGAL SYSTEM
LEGAL SYSTEM OF THIRD
COUNTRY**

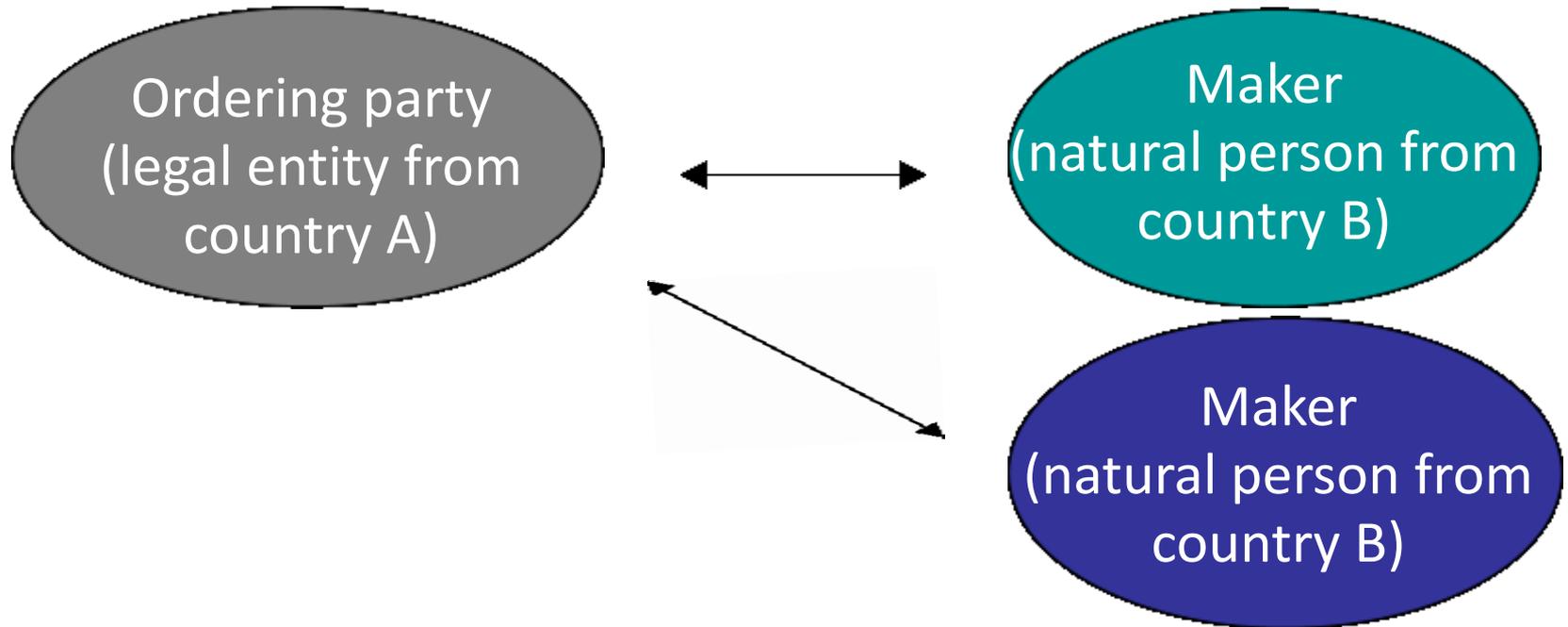
**DIRECT APPLICABLE
SUBSTANTIVE LAW
PROVISIONS OF
INTERNATIONAL
CONVENTIONS SUCH AS
VIENNA CONVENTION**

IF THERE IS NO CONVENTION

**INTERNATIONAL CONFLICT RULES,
REGULATION ROME**

Example 2: Contract for Work

1. **Choice of law** → legal system of country A, B or C, UNIDROIT rules etc.
2. **Regulation Rome I**: connecting factor is settlement of maker → legal system of country B



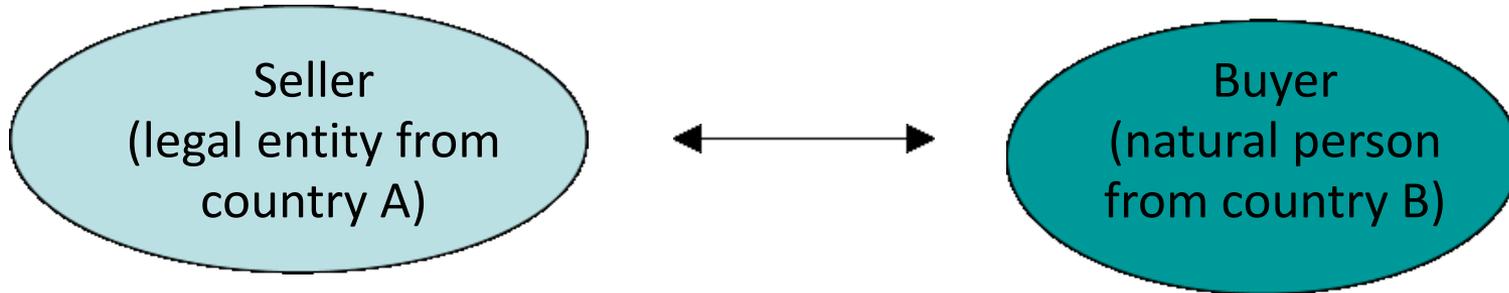
3. **Decision of the judge**: fair decisions → e.g. Legal system of country A

International treaties with direct effect

- result of law unification
- no needs to choose it in contract
- only some fields of interest, i.e.
 - sale of goods
 - international transport

Example 1: Contract of sale

Direct rule existence : Vienna convention (1980)



Application of Vienna convention conditions:

Condition 1: Seller and buyer are legal entities from different countries

Condition 2: Countries A and B are contracting countries of Vienna convention

Condition 3: The subject of purchase is merchandise (good)

=> NO NEED TO DETERMINE or CHOOSE APPLICABLE LAW, Vienna convention will be applied

Example

There was an public tender for the construction of plant for the production of telephone cables. Ordering party (client) approved joint proposal of the Polish and Belgian companies. Then a contract was signed. According to the contract, **Polish company is obliged to supply the building material and machinery. Belgian company has to provide own technological equipment, install it and also train the staff of the client.**

Questions:

1. What law would be the most suitable in that case providing that contracting parts did not choose applicable law and potential conflict should be addressed to a court in the Czech republic?
2. By what legal rules should domestic court proceed?

How to resolve dispute

- There are a few modalities on how to resolve disputes between businessmen:
 - civil procedure before state courts
 - arbitration, including international arbitration
 - alternative dispute resolution as conciliation, mediation, etc.
- Parties involved either try to find a way of resolving disputes before the problem arised or they let this situation unnoticed.

National courts

- **Question:** National court of which country will decide?
 - EU: Council Regulation (EC) No 44/2001 of 22 December 2000 on **jurisdiction and the recognition and enforcement of judgments** in civil and commercial matters
- National Courts are called up to process and decide litigations and other cases involved in their competence according to civil procedures.

International arbitration

- Judicial systems do not allow disputing parties to choose their own judges.
- In contrast, arbitration offers the parties the unique opportunity to designate persons of their choice as independent arbitrators.
- Arbitration is a simplified version of a trial and arbitration hearings usually lasting only a few hours, and the opinions are not on public record.
- Arbitration award is widely enforceable
- There is a need of including arbitration clause in contract
 - i.e.: *"All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules."*

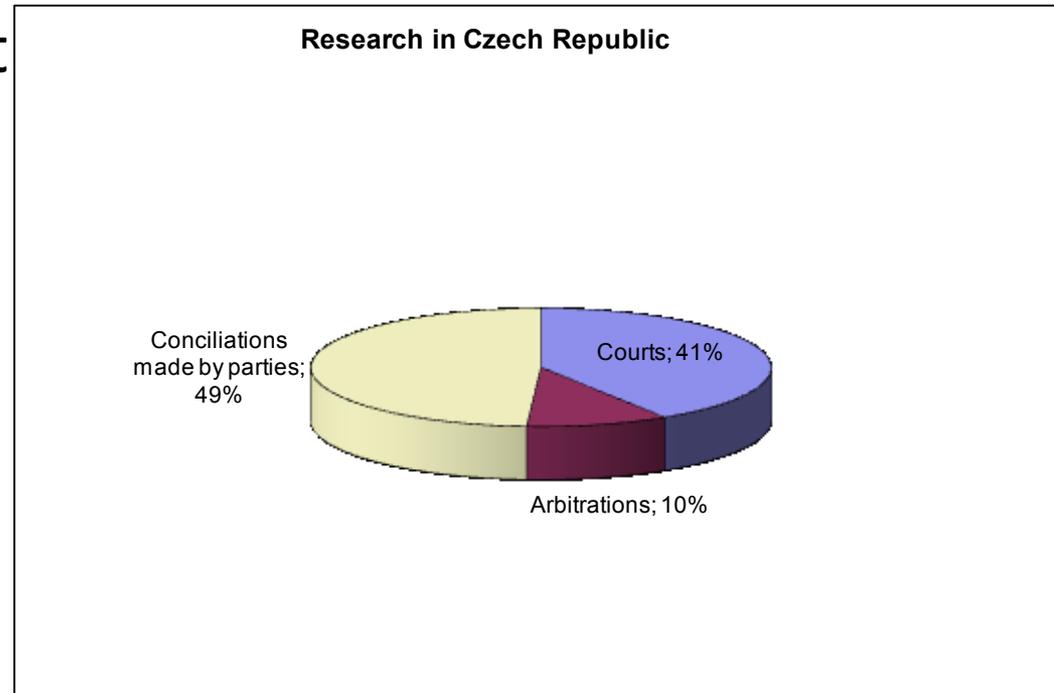
Alternative Dispute Resolution

- **ADR** increases the parties' opportunities to resolve disputes prior to or during the use of formal court procedures and litigation (which can be very costly and time-consuming).
- It includes the use of a **neutral individual** such as a **mediator** who can assist disputing parties in resolving their disagreements.
- **Problem:** if parties don't want to make a peace agreement, there is no power to enforce them

Research in Czech Republic

COURSE OBJECTIVES

Within this research only 10% of participants have responded that they had taken advantage of arbitration and many of them do not even have correct information about it



Summary

Question 1

- What will be the legal source of our contract?
 - International treaty
 - Legal order of certain state
 - Private rules

Question 2

- Who will decide our dispute
 - National court
 - Arbitration
 - Conciliator, mediator