

# 1. Introduction

In his seminal work *De Jure Belli ac Pacis* (“*On the Law of War and Peace*”), which was based on the work of the Spanish theologian, philosopher and lawyer *Francisco de Vitoria* and with which he laid the foundation for modern international law, *Hugo Grotius* coined the famous phrase: “Liberty [...] is the power, that we have over ourselves [...]”<sup>1</sup>. *Grotius* derived this liberty from natural law and described it as a fundamental “private right [...] established for the advantage of each individual”. In international arbitration, the parties exercise this individual power in their arbitration agreement as an expression of their personal or “private” autonomy.<sup>2</sup> Today, many of these agreements provide for institutional arbitration. This variety of arbitration has always been one of the cornerstones of the international arbitration process. Its central role is mirrored, e.g. in Art. 2 (a) UNCITRAL Model Law on International Commercial Arbitration of 1985<sup>3</sup>. It provides that, throughout the

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<sup>1</sup> Hugo Grotius, *On the Law of War and Peace: Including the Law of Nature and of Nations*, translated from the original Latin by Rev Campbell A.M., Vol. I, 1814, 12.

<sup>2</sup> See, for example R Mullerat, ‘The Contractual Freedom of the Parties (Party Autonomy) in the Spanish Arbitration Act 2003’ in G Aksent, KH Böckstiegel, MJ Mustill, PM Patocchi and AM Whitesell (eds) *Global Reflections on International Law, Commerce and Dispute Resolution. Liber Amicorum in Honour of Robert Briner* (ICC 2005), 544: “Spanish arbitration is based [...] on the prior decision each [party] makes to submit disputes to arbitration. The primary manifestation of the parties’ free will is their deciding to opt out of ordinary litigation and to submit their disputes to arbitration”; see also B Cremades, ‘Les effets de la clause d’arbitrage dans la jurisprudence espagnole recente’ in J Schultsz and A van den Berg (eds), *The Art of Arbitration, Liber Amicorum Pieter Sanders*, (Kluwer 1982); E. Gaillard and J. Savage (eds), *Fouchard/Gaillard/Goldman on International Commercial Arbitration* (Kluwer 1999), No 46: “The contract between the parties is the fundamental constituent of international arbitration.”; GA Bermann, ‘Arbitration and Private International Law, General Course on Private International Law’ (2017) 381 *Collected Courses of the Hague Academy of International Law* 58 et seq; C. Blackaby and N. Partasides (eds), *Redfern and Hunter on International Arbitration* (6th edn, OUP 2015), No 6.07.

<sup>3</sup> The Model Law “reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal