

Keynote speech

The Mauritius International Arbitration Conference

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Dr the Honourable Prime Minister

Distinguished guests and delegates

Ladies & Gentlemen

Opening remarks

It is a pleasure to be here today in this beautiful country. I would first like to thank the Prime Minister and the Government of Mauritius for the invitation to this conference and for the privilege of introducing it with this keynote speech.

I would also like to thank Mr. Salim Moollan for his work with the United Nations Commission on International Trade Law, UNCITRAL – and also commend his efforts in assisting Mauritius to establish itself as a centre of reference in the field of international arbitration.

The topic of today: “An African Seat for the 21st Century”, is important and relevant, in particular for the African continent. It is also significant for the promotion of international arbitration more broadly, as a conduit for the strengthening of the rule of law in the region and beyond.

Mauritius has taken a huge leap towards becoming a centre of excellence not only in the realm of arbitration, but also in the realm of commerce and investment, and in strengthening the rule of law in the region.

The drive of Mauritius to create an arbitration centre of excellence is remarkable. In so doing, Mauritius has taken significant steps towards the promotion of the rule of law in Mauritius and towards enhancing its attractiveness and that of the region, for the effective and peaceful resolution of international disputes. This conference is a testament to the commitment of Mauritius to position itself as a credible and enduring platform in the domain of international arbitration.

The work of the UN in relation to international arbitration

Let me say a few words about the UN's direct contribution to international arbitration; both commercial and investment arbitration.

You are all familiar with UNCITRAL, the UN's core legal body in the United Nations system in the field of international trade law. It is serviced by the Division of International Trade Law, which is one of the units of my Office, the Office of Legal Affairs.

UNCITRAL plays a key role in the field of international arbitration specifically and in the promotion of the rule of law, more generally, at an international level. UNCITRAL's work in the harmonization and modernization of commercial law has proved to benefit both capital exporting and receiving States alike. It has promoted the flow of so much needed investment from certain parts of the world to others. It has helped in strengthening the legal guarantees available (the rule of

law one should say) both for investors and for States, thereby creating a climate of confidence and trust; an indispensable condition for the promotion of sustainable development and growth.

Let me highlight in this connection also the work of UNCTAD, with which some of you may be less familiar.

UNCTAD, or the United Nations Conference on Trade and Development, was established in the 1960s over growing concerns about the place of developing countries in international trade. At that time, UNCTAD was institutionalized with a series of bodies and a permanent secretariat, which is part of the UN Secretariat. The work of UNCTAD has been particularly felt in recent years in the area of investment and investment arbitration more specifically. UNCTAD has played an important role in terms of technical assistance and capacity building of trade negotiators and government officials involved in trade-related issues, of which international arbitration is just one part. Particularly relevant has been the role of UNCTAD in helping developing countries to participate as effectively as possible in international rule-setting for investment, including investment arbitration.

The work of the UN in relation to the Rule of law

The rule of Law, in all its possible iterations, plays a central role in the UN's agenda.

In the Preamble of the Charter of the United Nations, the signatories of the Charter, the peoples of the United Nations, affirmed their determination "to establish conditions under which justice and respect

for the obligations arising from treaties and other sources of international law can be maintained.”

The rule of law is at the heart of the mission of the United Nations and is a concept that my office works hard to promote and achieve, as a principle embedded in the UN Charter, and as a key to avoiding conflict and achieving long-lasting peace.

As the Legal Counsel of the United Nations, I am charged with the task of promoting and strengthening the rule of law, at the national and international levels, and to support the Secretary-General’s efforts in the pursuit of justice and the end of impunity for war crimes, crimes against humanity, genocide and other serious violations of international law. It is my mission to help the UN to act in accordance with the rule of law. My Office plays an instrumental role within the UN in helping with the concrete and practical application of the rule of law.

Within the UN, the rule of law has been described as:

“a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”

At its core, the concept embodies principles of fairness, accountability and transparency; the fundamental principles of the international legal order.

In this context, private international law has a critical role to play in establishing and reinforcing such legal order. Indeed, the legal certainty required for promoting entrepreneurship, investment and job creation is fundamental to the rule of law. Therefore, efforts towards the recognition and enforcement of property rights and contracts internationally through reliable mechanisms of dispute resolution, such as arbitration, are steps in the right direction.

Similarly, we should not forget the relevance of national laws. Whilst the resolution of international disputes provides a framework for the development of international best practice that may be incorporated domestically, a sound basis in national law and practice for the resolution of disputes equally promotes a strong and durable judicial infrastructure. A solid judiciary is actually indispensable for the good functioning of arbitration and of the rule of law in general.

As was put by former Secretary-General, Kofi Annan, in his report of 2005 entitled "In Larger Freedom":

"Every nation that proclaims the rule of law at home must respect it abroad and every nation that insists on it abroad must enforce it at home."

Let me now move on to the role – I think – international arbitration plays in facilitating and strengthening the rule of law, and the work of the UN in supporting that aim.

International arbitration and the Rule of Law

International arbitration has long been seen as the optimal way to address and resolve disputes between business parties. In the investment context and often in the purely commercial context, it depoliticizes the dispute, assures neutrality in adjudicating the dispute, and is perceived as an economical, speedy, and flexible procedure. Moreover, it is seen to be offering a fair amount of control over the procedure and assures that awards are easily enforceable abroad, thereby creating a sense of legitimacy.

International arbitration, therefore, enables parties in dispute to achieve recognition and enforcement of their property rights and binding commitments, which form the basis for any commercial activity.

The UN, through the work of UNCITRAL, has played an instrumental role in making this possible; in promoting better legal standards with a view to achieving legal certainty in order to build confidence between business parties, be it States or private entities. This has undoubtedly had an effect in encouraging the flow of investment North-South and South-South alike and in the promotion of development.

No doubt, better legal standards and fair, stable, predictable legal frameworks generate inclusive, sustainable and equitable development. They foster economic growth and employment and facilitate entrepreneurship and investment.

But international arbitration, as a peaceful and reliable mechanism of resolving disputes, has proved to also assist positively in the consolidation of the larger structure of the international rule of law. Instruments such as the 1958 New York Convention, the 1985 Model Law on International Commercial Arbitration, amended and updated in 2006, and the 1976 UNCITRAL Arbitration Rules, recently amended and updated in 2010 have contributed decisively to the development and promotion of international standards in the field of international arbitration. These are standards that are a mere reflection of the basic principles of fairness, accountability and transparency, of the rule of law that I was referring to earlier. Let this be a tribute to the work of UNCITRAL as a forum for the discussion between Member States in this domain.

But let me talk briefly about what I referred to earlier as the larger structure of the international rule of law.

In September this year, the first meeting of Heads of State and Government on the rule of law at the national and international levels was held in New York on the sidelines of the 67th session of the General Assembly.

I had the privilege of participating in such a historic meeting where the Heads of States and Government of the 193 Member States, including Mauritius, reaffirmed their commitment to international law and justice, to an international order based on the rule of law, which are indispensable foundations to a more peaceful, prosperous and just world.

The draft declaration adopted at that meeting not only reaffirmed the Member States' commitment to the rule of law but recognized that the respect for and promotion of the rule of law should guide all of their activities and accord predictability and legitimacy to their actions. The draft declaration also recognized that all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws, and are entitled without any discrimination to equal protection of the law.

Most importantly, in the context of this conference, the draft declaration recognized as well the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship. In this regard, Member States commended, as we do today, the work of UNCITRAL in modernizing and harmonizing international trade law.

To take just one example, the 1958 New York Convention is a most extraordinary acknowledgement by an overwhelming majority of States in the world of the importance of arbitration, and of the need for arbitral awards, no matter where they were issued and no matter who the parties involved, to be effective and enforceable anywhere.

The success of this text is a tribute to the role of arbitration as a means of settling international disputes, and indeed to the perception of States that common legislative standards should exist with a view to fostering development, economic growth and employment.

But the development of the New York Convention and the continuous work undertaken by UNCITRAL in harmonizing its application are not the only examples of the Commission's achievements.

Already in 1979, UNCITRAL recognised that domestic courts' ability to impose restrictions on the enforcement of awards might result in domestic courts in different countries interpreting such restrictions in different ways. Hence, the need for renewed efforts to harmonise domestic laws relating to international arbitration.

These efforts culminated in the 1985 Model Law on International Commercial Arbitration; a model intended to encourage a more uniform approach to arbitration worldwide. As you all know, it was revised in 2006.

By adopting the Model Law, States have expressed, as Mauritius did in 2008, a commitment to using internationally agreed legal standards, thereby reinforcing their commitment to the rule of law internationally and their credibility as reliable business partners.

In this regard, the work of UNCITRAL in developing a standard on transparency in the settlement of investment disputes is of high importance. Transparency, as part of the broader principle of good governance, is an indispensable element when matters of public interest are at stake. Whilst I am sensitive to the need for confidentiality in disputes, at certain stages and for the achievement of certain goals, accountability and transparency need to be taken seriously as part of any future system of international rule of law.

This will bring greater legitimacy and will certainly strengthen international arbitration as a reliable dispute resolution mechanism.

Let me just say that under the leadership of Secretary-General, Ban Ki-Moon, the United Nations has achieved significant progress in making accountability, at all levels, the cornerstone of the architecture of the international legal order and a centrepiece of his agenda. As the Legal Counsel, I can only support the work of the Secretary-General in this regard. Slowly but surely we are witnessing the birth of a new age of accountability.

In this new era, and also in the context of this conference's theme, nobody is above the law, including Heads of State. Leaders will be held accountable for their actions in all aspects of their functions, as part of a higher principle of good governance and respect for the rule of law.

In fact, in the same draft declaration that I referred to earlier, the Heads of State and Government stressed the importance of the rule of law as an essential element in addressing and preventing corruption. As stated in the draft declaration, they are convinced of the negative impact of corruption in obstructing economic growth and development, and eroding public confidence, legitimacy and transparency.

Indeed, transparency is an important means to achieve accountability; to eradicate corruption. I wish UNCITRAL, and its Secretariat, the best of luck in the effort to achieve the right balance. It is not an easy task but it is one worth striving for.

Now, let me turn to Mauritius' achievements, which in my view deserve our greatest recognition and admiration.

The achievements of Mauritius

It is with great pleasure that I stand here today to commend the Government of Mauritius for its efforts in creating a new platform in the region for international commercial and investment arbitration. And for its efforts more broadly to position itself as a champion of the rule of law in the region and beyond.

Let me mention some of those achievements.

Mauritius is a party to the major UN human rights instruments, such as the two International Covenants on Civil and Political Rights and Economic and Social Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Mauritius has also developed domestic legislation consistent with those instruments. In 2002, Mauritius ratified the Rome Statute of the International Criminal Court and, as far as I understand, has developed national legislation, with the assistance of the ICRC, to ensure its implementation.

In so far as arbitration is concerned, Mauritius acceded to the New York Convention and ratified it in 2004. In 2008, it adopted an arbitration law based on the UNCITRAL Model Law. In 2009, it concluded a host country agreement with the Permanent Court of

Arbitration. And in 2011, it entered into an agreement with the LCIA for the establishment and operation of a new arbitration centre in Mauritius, to be known as LCIA-MIAC Arbitration Centre. Mauritius is in this way sending clear signals of its commitment to support a progressive and modern rule of law in the field of international business transactions and beyond.

These efforts have the added value of being a home-grown initiative that reflects the changes in the balance of powers worldwide; in the flows of capital and economic cooperation nowadays. Indeed, North-South cooperation is slowly being replaced by a South-South cooperation and even a triangular cooperation, including in the field of rule of law. It is a healthy change of dynamics, one that is reflective of a slow but thorough process of democratization worldwide.

At the end of the Second World War, nearly every country in Africa was subject to colonial rule or administration. Mauritius did not gain independence until 1968. With the UN's founding and the massive decolonization effort undertaken thereafter, Africa is now independent and the African Union boasts over 50 member States, including Mauritius.

It is surely a well-received honour for Mauritius to have bid successfully to host the Congress for International Council for Commercial Arbitration in 2016. From what I understand, this is the first time that the biennial ICCA event will be held in Africa in its fifty-year history.

Mauritius is also strategically located between Asia and Africa. I am certain that the talented pool of lawyers and judges present here today will surely know how to continue developing and

modernising Mauritius' legal infrastructure to consolidate what has already been achieved to date.

Quite apart from the beautiful surroundings in which we find ourselves, as the Legal Counsel of the United Nations, I celebrate the progressive, ambitious and forward-looking drive of Mauritius to modernize its legal regime and to take advantage of its strategic location. It is indeed an honour for me to be able to witness such development today.

It is with great pleasure that I stand here today to commend the Government of Mauritius for its efforts in creating a new platform in the region for international commercial and investment arbitration. And for its efforts more broadly to position itself as a champion of the rule of law in the region and beyond.

What Mauritius is in the process of achieving in the region is no doubt a remarkable step forward which may have extraordinary positive consequences for the sustainable development of a continent that has such enormous potential.

Mauritius has taken the tools that the United Nations has developed in a multilateral context, and run with these, creating a solid foundation for a true African seat of arbitration for the 21st century, and beyond. It is my hope, certainly, that Mauritius' star, the Star and Key of the Indian Ocean, continues to shine for international arbitration, for the rule of law, and for the region.

Thank you very much.