



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

Signing Ceremony of the Transparency Convention

Statement

by

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Thank you for that introduction and my sincere appreciation to Ambassador Hahn for his statement. It was under your able stewardship that UNCITRAL was able to finally lower the anchor after concluding its long journey of transparency in investment arbitration. You made it possible for us to travel to Mauritius and I thank you for that.

Honourable Ministers, Attorney General and Parliamentary Counsel of Mauritius,

Excellencies,

Bureau members of UNCITRAL
Distinguished speakers and guests,

Ladies and Gentlemen

Let me also express how honoured I am to be addressing you here, in a country that has truly embraced international arbitration as an effective method of resolving commercial and investment disputes. I am particularly pleased because this is my first visit to Mauritius since taking up my duties as the Legal Counsel of the United Nations.

As you well know, UNCITRAL is a commission established by the General Assembly with a mandate to harmonize and modernize international trade law. The secretariat functions of the Commission are bestowed upon the International Trade Law Division, one of the six divisions in my office, the United Nations Office of Legal Affairs. As such I would like to take this opportunity to reflect briefly on UNCITRAL's overall role and particularly with regard to its recent achievements in the preparation of legal standards on transparency in investment arbitration, which brings us together today.

UNCITRAL has made significant contribution to developing and promoting international standards in the field of arbitration. The near-universal accession to the New York Convention highlights the need for arbitral awards to be recognized and enforced abroad. The success of the New York Convention and its increased use are a tribute to the role of arbitration as a peaceful means of settling international disputes, as are the numerous enactments of arbitration legislation based on the UNCITRAL Model Law on International Commercial Arbitration (1985, updated in 2006), and the extensive use of the UNCITRAL Arbitration Rules (1976 and revised in 2010). UNCITRAL continues to work diligently in the field of dispute resolution and I have been informed that the Working Group on Arbitration and Conciliation is currently revising the UNCITRAL Notes on Organizing Arbitral Proceedings, with very interesting topics on the table for its future work: enforcement of settlement agreements and concurrent proceedings in investment arbitration.

UNCITRAL's work on transparency sprouted from the experience gained by UNCITRAL in the field of international arbitration. And the significance of ensuring transparency in investment arbitration stemmed from the role of investment as a tool for sustainable development. Put together, these elements provided the basis for UNCITRAL to promote transparency and inclusiveness, both expressions of core United Nations values, as they relate to human rights, good governance and the rule of law.

In this context, UNCITRAL commenced work on transparency in investment arbitration in October 2010 and after three years, in 2013, the Transparency Rules (*UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration*) were adopted by consensus. The adoption of the text constitutes an important achievement, in light of the subject matter addressed by the Rules – the right of access to information.

The Transparency Rules represent a fundamental change from the status quo of investment arbitrations often conducted behind closed doors and hidden from the public view, even when the issues being raised gather much attention from the public and the media. Without going into much detail, the Rules when

they apply, provide a procedural regime that gives the public, as a matter of course, broad access to a wealth of documents in a dispute. The Rules also provide for open hearings and a qualified right for third parties to make submissions. They include robust safeguards for the protection of confidential information. And, most importantly, they balance the public interest in receiving information and the interest of disputing parties for a fair and efficient resolution of their dispute.

As mentioned by Ambassador Hahn, because the Transparency Rules only apply to investment treaties concluded after 1 April 2014, the Commission began preparing the convention to give those States that wished to make the Transparency Rules applicable to their existing investment treaties an efficient mechanism to do so. That result of the Commission's hard work was eventually approved by the General Assembly of the United Nations and it has brought us all here. All in all, I firmly believe that the conclusion of the Mauritius Convention is a momentous occasion in the field of investment arbitration.

By becoming parties to the Mauritius Convention (*United Nations Convention on Transparency in Treaty-based Investor-State Arbitration*), States agree to apply the Transparency Rules to arbitration arising under their existing investment treaties, either unilaterally or on a bilateral basis. At this point, I would also emphasize the flexibility provided to States under the Convention, as States are allowed to exclude from the scope of the Convention certain investment treaties, certain sets of arbitration rules, or unilateral application.

With the Transparency Rules and the Convention now firmly in place, the question that follows is where the relevant information would be available to the public. In fact, the central feature of both the Transparency Rules and the Convention is the repository function stipulated in article 8 of the Rules. Let me underline the importance of the Transparency Registry, which will be a unique place for Governments to share information about investment cases and law, and for policy makers and Government officials to gain first-hand knowledge of how the system functions. Once cases will be brought under the Transparency Rules, the registry will provide a consolidated, transparent and easily accessible global case record database for all investor-State arbitrations conducted pursuant to the Transparency Rules and the Transparency Convention. This is significant because the Transparency Rules are currently the only existing universal stand-alone standard in the field.

UNCITRAL has become known world-wide for establishing modern legal rules regulating international commerce in a neutral and balanced manner and assisting States and other relevant stakeholders with the understanding, enactment, implementation and interpretation of those standards. As Ambassador

Hahn mentioned, 2015 marks another important turning point in the work of the United Nations as a new post-2015 development framework is due to be agreed in September. We can look with great pride at the work of UNCITRAL and its contribution to development over the past decades and I firmly believe that there is more that UNCITRAL can contribute to the post-2015 sustainable development agenda. In fact, its work lies at the heart of the mission of the United Nations, as reflected in the preamble to the Charter, which calls upon the United Nations to “employ international machinery for the promotion of the economic and social advancement of all peoples.”

Let me conclude by providing you with some information about a new development at the United Nations. In August 2014, the Secretary-General established an Independent Expert Advisory Group (IEAG) to make concrete recommendations on bringing about a data revolution in sustainable development (see <http://www.undatarevolution.org>), which has now published its report. If I may cite the Expert Group’s words: “Data are the lifeblood of decision-making and the raw material for accountability. Without high-quality data providing the right information on the right thing at the right time, designing, monitoring and evaluating effective policies becomes almost impossible.”

The Mauritius Convention and the idea of transparency it spreads could also be understood in this general trend of data revolution. By making it possible for information about investment arbitration to flow to the public, it creates accountability of the process as well as the parties involved.

UNCITRAL standards on transparency combined (the Transparency Rules, the Mauritius Convention and the Transparency Registry) are the first successful multilateral attempt to reform investment arbitration, an area of much public and media attention at the moment. Where human rights and other public interests are concerned, transparency should be a governing principle. The Rules on Transparency, which came into force on 1 April 2014, and the Mauritius Convention, which opens for signature today, comprise a critical step in achieving that aim.

I thank you for your attention.