

**Welcome Speech by Hon Y K J Yeung Sik Yuen, GOSK, Chief Justice of Mauritius – Judicial Workshop on the New York Arbitration Convention of 1958 – 3 May 2012**



COUR PERMANENTE D'ARBITRAGE - PERMANENT COURT OF ARBITRATION

**WELCOME SPEECH BY**

**HONOURABLE Y K J YEUNG SIK YUEN, G O S K**

**CHIEF JUSTICE OF MAURITIUS**

*JUDICIAL WORKSHOP ON THE*

*NEW YORK ARBITRATION CONVENTION OF 1958*

TROU AUX BICHES RESORT & SPA, MAURITIUS

**3 MAY 2012**

## **The background to the New York Convention Roadshow in Mauritius on 3 – 4 May 2012**

---

- ❖ **Honourable Chief Justices and Judges from the following African States: Botswana, Lesotho, Malawi, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Swaziland, Tanzania and Zambia,**
- ❖ **Monsieur le Bâtonnier de l'Ordre des Avocats la République du Burundi,**
- ❖ **Colleagues Judges of the Mauritius Supreme Court,**
- ❖ **Professors Van den Berg and Paulsson,**
- ❖ **The Gentle ladies from the ICCA and the PCA, Ms. Paulsson, Bosman, Levine and Smith,**
- ❖ **Mr. Arnold Tsunga and his colleagues of the International Commission of Jurists.**
- ❖ **Distinguished Ladies and Gentlemen,**

- (1) Let me first welcome the 35 delegates from abroad who have graced us with their presence at this Road-show on the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention, which is organized jointly by the International Council for Commercial Arbitration (ICCA), the Permanent Court of Arbitration (PCA), the International Commission of Jurists (ICJ) and the Supreme Court of Mauritius.
- (2) By the sheer caliber of the participants to this road-show, we can gauge the quality of this judicial colloquium which has gathered prominent members of the higher judiciary in Africa. That the interveners who are about to address us are at the very frontiers of knowledge in the topic we are about to embark upon is added bonus to our good fortune. Indeed the Judiciaries of Africa should feel blessed that such towering authorities as Professor Albert Jan Van den Berg and Professor Jan Paulsson, the top authorities and experts on the New York Convention and their team, happen to be the resource persons of this “Judicial exposure”.
- (3) Our presence at this Workshop is the result of two happy events, the first happening in Paris and the second in Kampala. In July last, the wish was expressed in Paris by Mrs Paulsson that the ICCA holds a Road Show on the New York Convention for the benefit of Judges in Mauritius. It was suggested that it would be ideal if the workshop could be enlarged to become a regional one with participants from the higher Judiciary of Africa.. The present dates were there and then earmarked and

**Welcome Speech by Hon Y K J Yeung Sik Yuen, GOSK, Chief Justice of Mauritius – Judicial Workshop on the New York Arbitration Convention of 1958 – 3 May 2012**

some time later that year I attended my first meeting of the Chief Justices of the Southern African Region which was held in Kampala. By sheer coincidence, or was it done as a teaser, one of the Chief Justices suggested that the next meeting of Chief Justices should be held in Mauritius. That was the opportunity for me to apprise my colleagues that I held an open invitation for all of them to attend the present event. Coincidence could not have been more generous since I was immediately approached by one of our friends who is present in this room, with an offer to finance the travel and accommodation costs of participants from Africa.

Ladies and gentlemen, may I request that we give Mr Tsunga and his colleagues of the ICJ a good round of applause for their generosity which has rendered this regional event possible.

- (4) I mentioned yesterday in my welcome address at the Law Practitioners Training Session, that we had held a very successful meeting in December 2010 which was attended by representatives from all the major world institutions engaged in promoting international arbitration. We also considered at that meeting the Mauritian International Arbitration Act 2008 which indicates the aspiration and sets the tone for Mauritius to become a Centre for International Arbitration. I also mentioned the agreement reached between the State of Mauritius and the PCA whereby an office of the latter is set up in Mauritius with a local permanent representative. The PCA is given powers under the Act to provide judicial assistance for arbitration and, in order to avoid parallel litigation and delays, all the decisions of the PCA are final and cannot be challenged. Furthermore, there is the agreement reached between the London Court of International Arbitration (LCIA) and Mauritius for the former to run the Mauritius International Arbitration Centre (MIAC) as a joint venture.
- (5) In this meeting the NYC can be discussed in the larger context of the greater picture of inculcating a culture, a practice, a greater use of the promises of international arbitration and an awareness of its pitfalls.
- (6) The judicial mind in Africa is still much focused on a diet of rules, principles, doctrines and concepts of the nation state and national jurisdiction. Whatever is international is still looked at from the anchors of domestic law and domestic jurisdiction, although in the present age of globalization national barriers have been raised to the ground in free trade advocated by the World Trade Organisation. With the judge exposed to international norms and processes, the concern of our judicial mind is no longer the extent of our knowledge in this state of play on the world scene but the extent of our ignorance in it. Let me quote the Dean of the Law Faculty of the University of McGill, Maître Daniel Jutras on the role of the judges in the present era of transition. After having spoken about the emergence of an “Ordre juridique supranational qui émerge dans l’évolution du droit dans le monde” and which impacts both on the judicial institutions and the judicial rule itself, he comments that judges have become today the agents of globalization;  
*“Il est indubitable que, de bon gré ou mal gré, les juges nationaux sont au Coeur du phénomène d’Internationalisation du droit et de la justice.”*  
Because of the emergence of transnational disputes, the international consumer may select off the Dispute Resolution Shelf. From legitimate *forum shopping* there is *lex shopping*. International arbitration today is served with a number of packages. The

**Welcome Speech by Hon Y K J Yeung Sik Yuen, GOSK, Chief Justice of Mauritius – Judicial Workshop on the New York Arbitration Convention of 1958 – 3 May 2012**

end user today has the option of choosing not only an existing forum but also an existing juridical cadre. The national judge cannot stay stuck in his national grooves. His judicial mind needs to become part of the transition.

Careful thought has been given to the design of the road show and the organisers have striven hard not to give you unnecessary baggage. The programme covers no more issues than is strictly relevant and essential to the exercise.

I shall let you guess why the seat of this Road-Show had to be Mauritius. The obvious answer will surely dawn upon you by tomorrow.

It gives me much pleasure to declare the road show on the United Nations Convention on the Recognition of Foreign Arbitral Awards of 1958, also known as the New York Convention open.

Enjoy the Show.

**Y K J Yeung Sik Yuen, G.O.S.K.  
Chief Justice of Mauritius  
3 May 2012.**