INVESTMENT ARBITRATION FROM A RULE OF LAW PERSPECTIVE

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Brief introduction to the PCA

Peace Palace – The Hague (the Netherlands)

Ébène – Cyber City (Mauritius)
UNCITRAL Arbitration Rules
(as revised in 2010)

THE MAURITIAN INTERNATIONAL ARBITRATION ACT 2008
Text and Travaux Préparatoires

LA LOI MAURICIENNE SUR L’ARBITRAGE INTERNATIONAL DE 2008
Textes et Travaux Préparatoires
“Desirous of extending the empire of law, and of strengthening the appreciation of international justice…”
PCA Docket

89 pending cases

- Investment Treaty/Investment laws: 51
- Inter-State: 5
- Contracts with States, State Entities, or IGOs: 29
- Other: 4
Inter-State Disputes

Eritrea/Yemen Arbitration (1998)
Investor-State Disputes

Tribunal and PCA Registry in the Hulley Entreprises Limited et al. v. the Russian Federation arbitrations (2014)
“[R]espect for the rule of law is not a one way-street. Foreign investors have a duty to abide by the law, pay taxes, provide required disclosures of their activities in the host State, and cooperate with the authorities.”

Hulley Entreprises Limited v. the Russian Federation, Final Award, 18 July 2014, para. 83.
1. The law must be accessible and so far as possible, intelligible, clear and predictable.

2. Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.

3. The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.

4. Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.
5. The law must afford adequate protection of fundamental human rights.

6. Means must be provided for resolving without prohibitive cost or inordinate delay, bone fide civil disputes which the parties themselves are unable to resolve.

7. Adjudicative procedures provided by the state should be fair.

8. The rule of law requires compliance by the state with its obligations in international law as in national law.
“[The JRP] ignored relevant facts and relied upon arbitrary, biased, capricious, and irrelevant considerations.”

Discussion to be continued in Mauritius...