



INVESTMENT TREATY ARBITRATION AND THE RULE OF LAW

Farouk El-Hosseny
Legal Counsel
Permanent Court of Arbitration
felhosseny@pca-cpa.org

www.pca-cpa.org



Brief introduction to the PCA

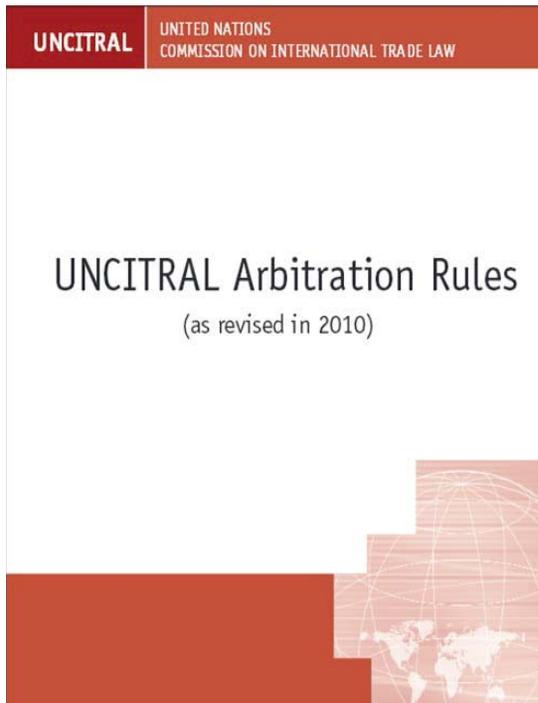


Peace Palace – The Hague (the Netherlands)



Ébène – Cyber City (Mauritius)

Appointing Authority Services



**THE MAURITIAN INTERNATIONAL
ARBITRATION ACT 2008**
Text and Travaux Préparatoires

**LA LOI MAURICIENNE SUR
L'ARBITRAGE INTERNATIONAL DE 2008**
Textes et Travaux Préparatoires



1899 Convention for the Pacific Settlement of International Disputes

*“Desirous of extending the empire
of law, and of strengthening the
appreciation of international
justice...”*

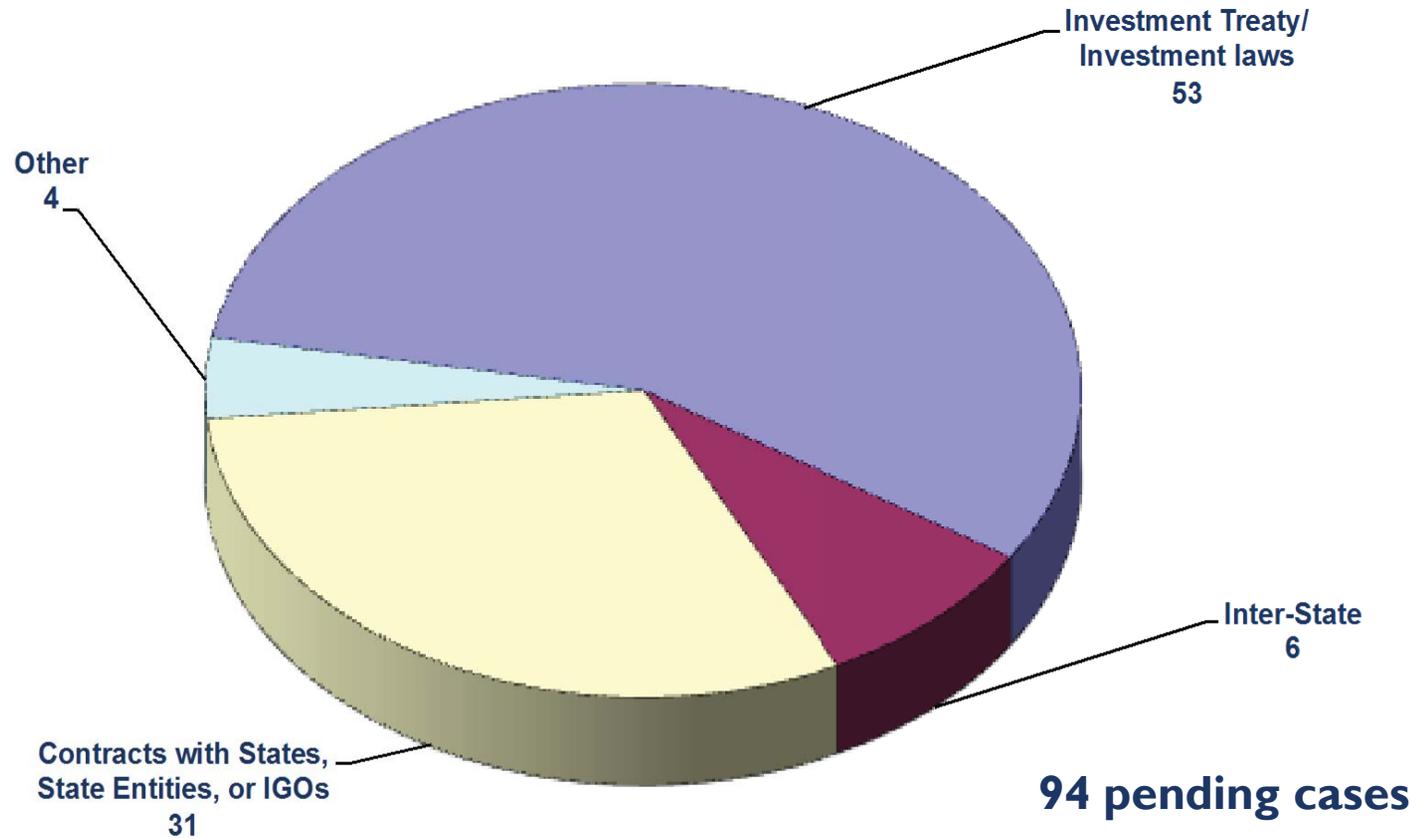


Delegates at the 1899 Hague Convention

Preamble, 1899 Hague Convention



PCA Docket



UN definition of the Rule of Law



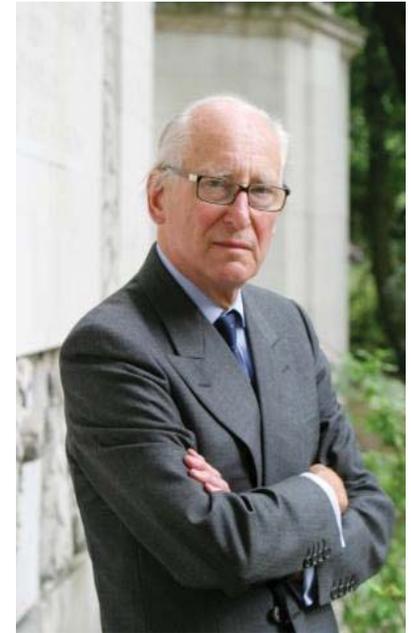
“a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”



Lord Bingham's Eight Principles of the Rule of Law

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.

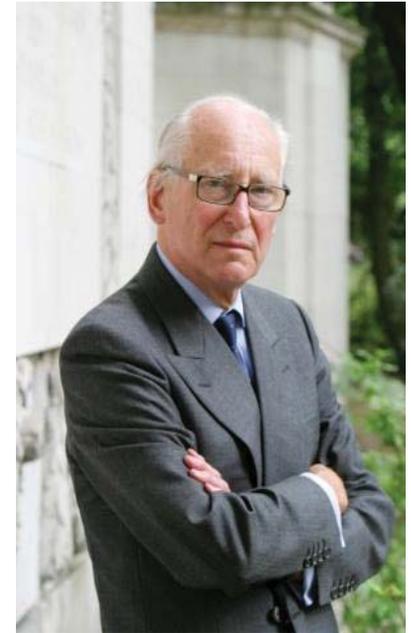


Lord Bingham (1933-2010)



Lord Bingham's Eight Principles of the Rule of Law

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.



Lord Bingham (1933-2010)



Hulley Entreprises Limited v. the Russian Federation (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.

Bilcon of Delaware et al v. Government of Canada (2015)



“[The JRP] ignored relevant facts and relied upon arbitrary, biased, capricious, and irrelevant considerations.”



*Bilcon of Delaware et al v. Government of Canada, Award on Jurisdiction and Liability of
17 March 2015, para. 362.*



Discussion to be continued in Mauritius...



