The Mauritius Convention on Transparency: A Model for ISDS Reform?

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2013: UNCITRAL adopts **Transparency Rules**
- Apply to UNCITRAL arbitrations under IIAs concluded **after** 1 April 2014 ("subsequent" treaties)

2014: UN GA adopts **Mauritius Convention**
- “Extends” Transparency Rules to IIAs concluded **before** 1 April 2014 ("existing" treaties)
Mauritius (or “Opt-in”) Convention Approach

- No need for treaty-by-treaty amendment (3,000+ IIAs)
- Modifies existing IIAs through one single multilateral instrument (Article 30 VCLT)
- Outcome: Opt-in Convention and IIAs co-exist
An Opt-in Convention for Broader ISDS Reform?

Opt-in Convention

Modifies

IIA

ISDS

IIA

ISDS

IIA

ISDS
Mauritius Convention Approach

Lessons Learnt:

- Efficient mechanism
- “Content” before “instrument to extend content”
- Flexibility
  - To modulate State’s involvement in reforms
Opt-In Convention: Flexibility

- Reservations
- Declarations

- Example: Article 287 UNCLOS


See CIDS Report, 2016, §§ 262-264
State Declarations (examples)

State A → Only Appellate Mechanism (AM)
State B → MIC and AM (in order of priority)
State C → Only MIC
Further information


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