



**United Nations Convention on  
Transparency in Treaty-based Investor-  
State Arbitration (Mauritius Convention)  
as a model for the Multilateral Instrument  
on ISDS Reform (MIIR)**

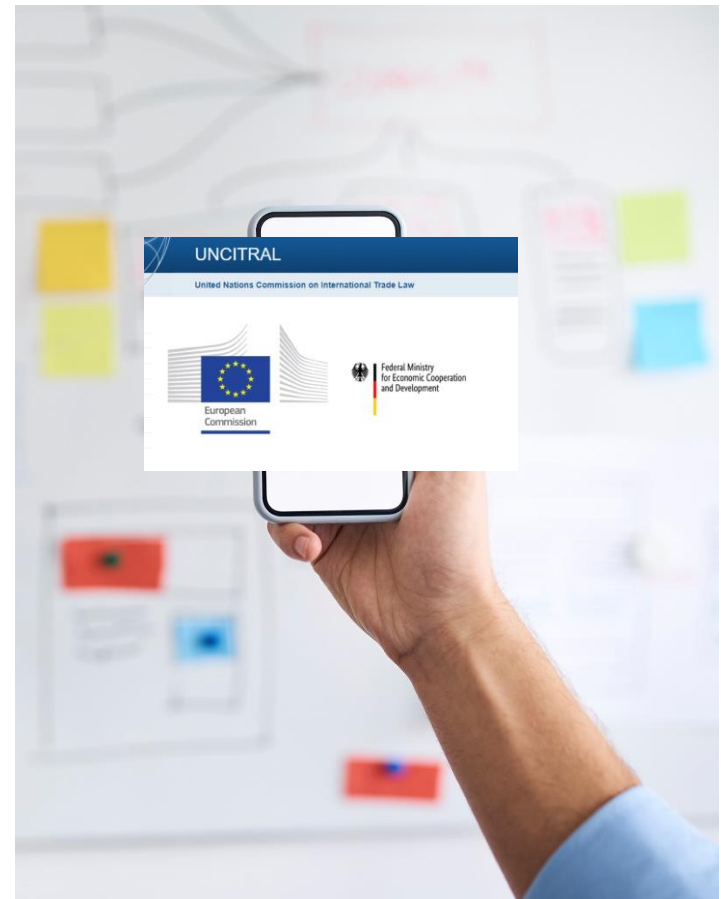
*The “Mauritius Convention on Transparency” promises to be a turning point in investment arbitration. My hope is that this [instrument] can bring greater efficiency and coherence to a system currently based on more than 3,000 treaties”*

*(Ban Ki-Moon, ICCA Congress, 9<sup>th</sup> May 2016)*

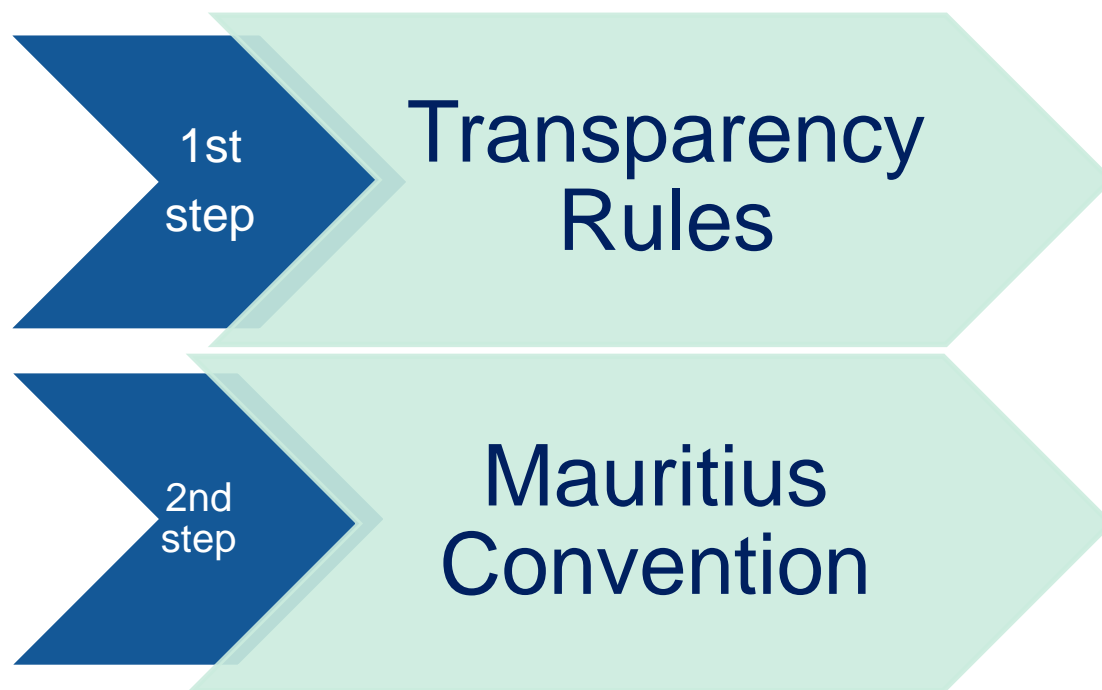


# UNCITRAL Transparency Standards

- **UNCITRAL Rules on Transparency in Treaty-based ISDS – contains the substantive provisions on transparency (8 articles)**
- **UN Convention on Transparency in Treaty-based Investor-State Arbitration (11 articles)**



# Work on transparency by WG II



# UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration



UNITED NATIONS

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# Application of the Transparency Rules

April 2014						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Only applies to future treaties

... unless ...

Disputing parties agree

... unless ...

Treaty parties agree

# Revising a treaty - challenges

Re-  
negotiation  
of terms of  
conditions

Rules for  
amending  
treaty

Domestic  
approval  
process

- ▶ Significant resources needed (diplomatic efforts, legal expertise, time)
- ▶ Need to prepare the convention

# Reforming treaties concluded prior to 1.04.2014

Through a Convention, Member States can supplement transparency in arbitral proceedings obligation in treaties concluded before the entry into force of the Rules.

## It is simple

- Fast-track = avoids renegotiation of existing treaties on the issue of transparency

## It is consistent

- Avoids a treaty-by-treaty approach
- Reduces complexity and inconsistency in international agreements



# Minimalist Approach of Mauritius Convention

- Captures consent of parties to application of Transparency Rules to existing treaties
- No substantive content
- No governance structure



# United Nations Convention on Transparency in Treaty-based Investor-State Arbitration



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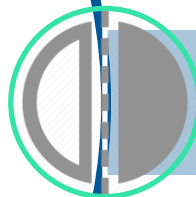
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# The Transparency Convention

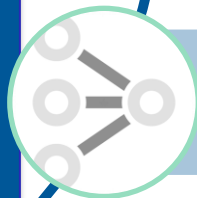
## UN Convention On Transparency In Treaty-based Investor-state Arbitration (The Mauritius Convention)



Supplements all existing investment treaties with respect to transparency-related obligations



Applicability of the UNCITRAL Arbitration Rules is irrelevant



Reservations: Investment treaty / Set of arbitral rules other than UNCITRAL

# Application of the Transparency Rules via the Mauritius Convention

The Transparency Rules would apply to investment arbitrations based on treaties concluded before 1 April 2014, **whether or not** conducted according to UNCITRAL arbitration rules, if:

## Bilateral or multilateral application

- The Respondent State is party to the Convention;
- The claimant is of a state that is a Party; and
- No reservations have been formulated by those States

## Unilateral offer of application

- Only the respondent State is party; and
- The claimant agrees to the application of the Rules

# Reservations

Exclusive list of possible reservations.

When States become a party to the Mauritius Convention, they can exclude

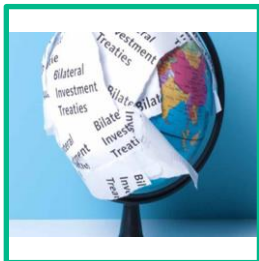
1. **Specific investment treaty;**
2. **Rules other than UNCITRAL Arbitration Rules, in which the State party is a respondent ;**
3. Non application of **unilateral offer of application**

# Transparency Regime: Status



Mauritius Convention: signed by 23 States, ratified by 9 States (Australia, Benin, Bolivia, Cameroon, Canada, Gambia, Iraq, Mauritius, Switzerland)

TR: apply on unilateral basis under all treaties concluded by State Parties, if claimant agrees to their application



TR incorporated in the majority of modern BITs

# Framework Convention on ISDS reform (MIIR)

- Preamble
- Objective
- Scope of application
- Relationship with existing investment agreements (compatibility or conflict clause)
- Dispute resolution mechanisms offered to investor claimants
- Procedural rules applicable to all dispute resolution mechanisms (for example, calculation of damages)
- Governance structure including monitoring mechanism or other committees
- Cooperation on ISDS reform including rules on negotiation of future protocols/annexes
- Financial arrangements
- Reservations
- Final provisions

