

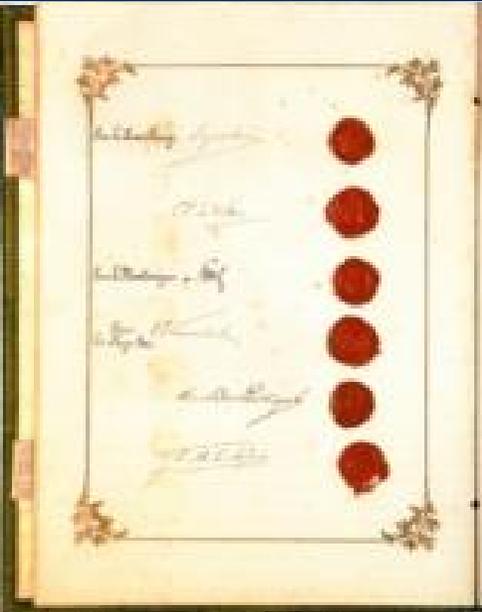
# **Arbitration as a Means of Effective Remedy for Human Rights Abuses at Sea**

**Martin Doe Rodríguez**

Senior Legal Counsel, Permanent Court of Arbitration

9 July 2020

# Advantages of Arbitration



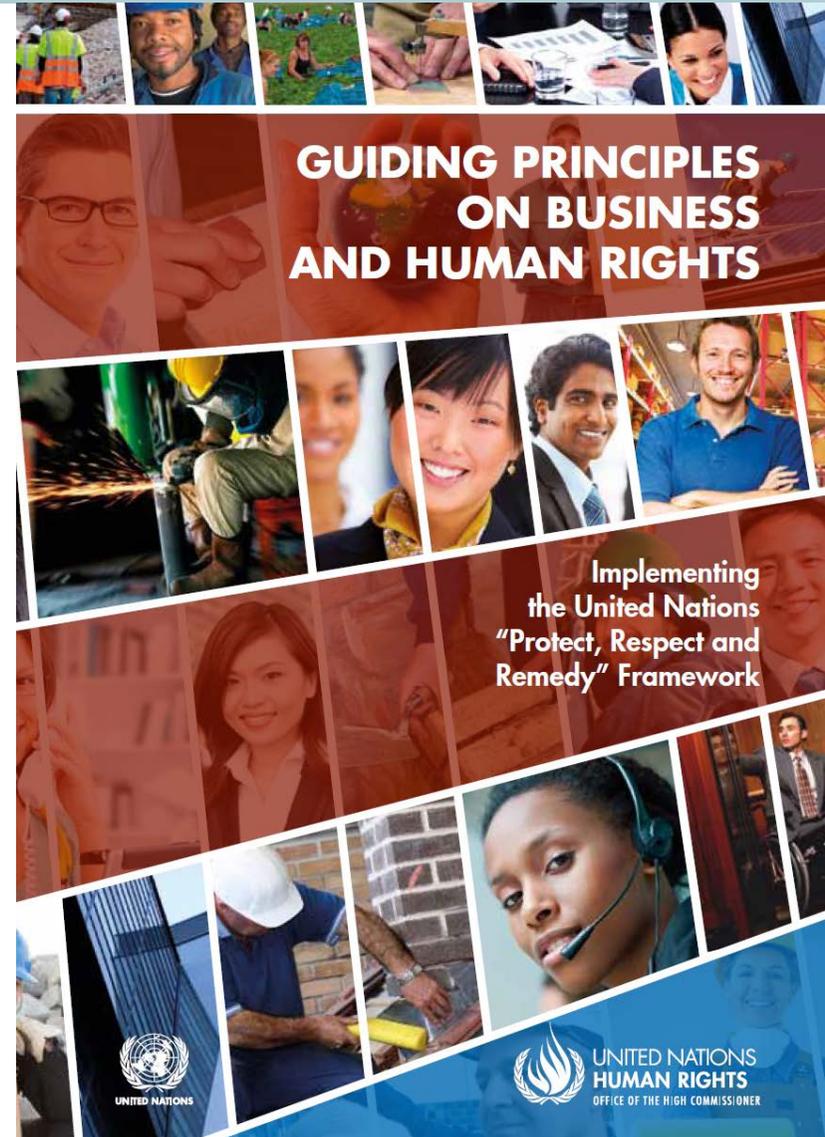
**CHARTER**  
*of* **THE**  
**UNITED**  
**NATIONS**

**AND STATUTE of THE**  
**INTERNATIONAL COURT**  
**OF JUSTICE**

- **Neutrality**
- **Expertise**
- **Enforceability**
- **Flexibility**

# UN Guiding Principles 3 I

- a) **Legitimate**
- b) **Accessible**
- c) **Predictable**
- d) **Equitable**
- e) **Transparent**
- f) **Rights-compatible**
- g) **A source of continuous learning**



# Proof of concept



**ACCORD**  
on Fire and Building Safety in Bangladesh

**“5. Dispute resolution.** Any dispute . . . shall first be presented to and decided by the [Steering Committee]. Upon request of either party, the decision of the SC may be appealed to . . . a final and binding arbitration process . . . administered by the PCA.”

# Bangladesh Accord Arbitrations



“In the Tribunal’s view, this case cannot be characterized either as a ‘public law’ arbitration (involving a State as a party) or as a traditional commercial arbitration (involving private parties and interests), or even as a typical labor dispute.”

– **Procedural Order No. 2, ¶ 93**

# Bangladesh Accord Arbitrations



“[There is] a genuine public interest in the Accord, including on the part of other stakeholders who would have a direct interest in its interpretation. [...] On the other hand, the Tribunal must take into account competing factors stemming from the language of the Accord and the practice under it, which point to an obligation to protect certain information about the participating brand companies.”

– **Procedural Order No. 2, ¶ 94**

# Bangladesh Accord Arbitrations



“As the Parties have agreed to apply the 2010 UNCITRAL Arbitration Rules to the present proceedings, hearings are to be held in private and any award of the Tribunal can only be made public with the consent of the Parties.”

– **Press Release No. I**

# The Hague Rules

“The Hague Rules are based on the Arbitration Rules of the United Nations Commission on International Trade Law (with new article I, paragraph 4, as adopted in 2013) (the “UNCITRAL Rules”), with modifications needed to address certain issues likely to arise in the context of business and human rights disputes.”

## – Introductory Note

## The Hague Rules On Business and Human Rights Arbitration

December 2019

# Arbitration ↔ Human Rights

**Neutrality**

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# Accessible and Equitable

## Article 5: Representation

*“Where a party faces barriers to access to remedy, including a lack of awareness of the mechanism, lack of adequate representation, language, literacy, costs, physical location or fears of reprisal, the arbitral tribunal shall, without compromising its independence and impartiality, ensure that such party is given an effective opportunity to present its case in fair and efficient proceedings.”*

## The Hague Rules On Business and Human Rights Arbitration



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# Legitimate and Predictable

## Article 11: Arbitrators

*“(b) Persons appointed to serve as arbitrators under these Rules shall be persons of high moral character, who [...] shall [observe] the Code of Conduct;*

*(c) The presiding or sole arbitrator shall have demonstrated expertise in international dispute resolution and in areas relevant to the dispute [...]”*

## The Hague Rules On Business and Human Rights Arbitration



December 2019

# Transparent

## Article 41: Public hearings

*“[H]earings for the presentation of evidence or for oral argument shall be public [except] where there is a need to protect confidential or restricted information or the integrity of the arbitral process pursuant to Articles 18, 26, 33 and 42.”*

## The Hague Rules On Business and Human Rights Arbitration



December 2019

# Transparent

## **Article 39:** Scope of application of transparency provisions

*“If all parties are legal persons of a commercial character and the arbitral tribunal determines that there is no public interest involved in the dispute, the arbitral tribunal may, on its own motion or at the request of a party, and after inviting the parties to express their views, decide not to apply Articles 38 to 43.”*

## The Hague Rules On Business and Human Rights Arbitration



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# Rights-compatible

## **Article 45:** Form and effect of award

*“The arbitral tribunal shall state the reasons upon which the award is based and shall satisfy itself that the award is human rights-compatible.”*

**Commentary:** *“[T]his requirement is one of procedure and form, as part of the general requirement of reasons, and not of substance or applicable law.”*

## The Hague Rules On Business and Human Rights Arbitration



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# Accessible and Equitable

## **Article 54:** Deposits of costs

*“The arbitral tribunal shall ensure that the amount of the deposit does not constitute an undue obstacle to any party’s participation in the proceedings.”*

*3. The arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only upon approval of the appointing authority.”*

## The Hague Rules On Business and Human Rights Arbitration



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# Legitimate and Predictable

## Commentary on Article 6: Appointing Authority

*“Article 6 foresees that the PCA, given its intergovernmental nature and experience in business and human rights disputes, will serve as appointing authority [...] Considering that the legitimacy of the arbitral proceedings is closely tied to the selection of suitable arbitrators, parties are encouraged to consider the matter carefully before choosing a different appointing authority.”*

## The Hague Rules On Business and Human Rights Arbitration



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# Legitimate and Predictable

## **Code of Conduct, Article 6:** International Best Practices

*“A Code of Conduct Committee may be established by the Permanent Court of Arbitration or a body designated by the Permanent Court of Arbitration. The Code of Conduct Committee may revise and update the Code of Conduct. The Code of Conduct Committee may also serve other functions, including in connection with actual or potential violations of this Code.”*

## The Hague Rules On Business and Human Rights Arbitration



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# Transparent

## **Article 43:** Repository of published information

*“The repository of published information under these Rules shall be the PCA. The repository shall regularly publish general information about arbitration under these Rules as a source of continuous learning, including industry sector, names of arbitrators, outcome of cases and costs.”*

## The Hague Rules On Business and Human Rights Arbitration



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# Rights-compatible

## **Article 31:** Emergency arbitrator

*“A party that needs urgent interim measures that cannot await the constitution of an arbitral tribunal may submit a request for such measures to the appointing authority.”*

## The Hague Rules On Business and Human Rights Arbitration



December 2019

**Thank you!**



[www.pca-cpa.org](http://www.pca-cpa.org)