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Summary of the intersessional regional meeting on investor-State dispute settlement (ISDS) reform submitted by the Government of the Dominican Republic

1. At its fifty-first session (New York, 25 June–13 July 2018), the Commission welcomed the outreach activities organized by the Secretariat aimed at raising awareness about the work of the Working Group and ensuring that the process would remain inclusive and fully transparent. The Commission also welcomed the organization of the first intersessional regional meeting organized by the Government of the Republic of Korea focusing on the Asia Pacific region. The Commission further took note that, while it was clear that no decisions would be taken at such meetings, the event would provide an open forum for high-level government representatives and relevant stakeholders to discuss issues deliberated by the Working Group.¹
2. At its thirty-sixth session, the Working Group expressed its appreciation to the Government of the Republic of Korea and the Secretariat for having organized the first intersessional meeting and welcomed the organization of intersessional meetings in different regions aimed at raising awareness on the current work of the Working Group and at providing input to the current discussions ([A/CN.9/964](#), para. 14).
3. The second intersessional regional meeting was held on 13 and 14 February 2019 at Santo Domingo, Dominican Republic. The meeting was co-organized by the Ministry of Industry, Commerce and MSMEs of the Dominican Republic and UNCITRAL. As indicated above, the objectives of the meeting were to raise awareness in the Latin American and Caribbean region of the current work of the Working Group, and to provide an opportunity to reflect on the ISDS experience in the region, further contributing to the discussions at the Working Group.
4. The meeting was open to all those invited to the Working Group including delegations from other regions as well as other relevant stakeholders. It was attended by government officials from 32 States (Algeria, Argentina, Bahamas, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Cameroon, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, France, Germany, Grenada, Haiti, Honduras, Jamaica, Korea, Mexico, Nicaragua, Peru, Qatar, Romania,

¹ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17), para. 146.*



Spain, Santa Lucia, Uruguay and United States of America) and representatives from inter-governmental organizations, including the Caribbean Community (CARICOM), the European Commission, the International Centre for Settlement of Investment Disputes (ICSID), the Permanent Court of Arbitration (PCA), the United Nations Development Programme (UNDP), the Latin American and Caribbean Economic System (SELA), and the United Nations Office on Drugs and Crime (UNODC) as well as a number of non-governmental organizations, including the Inter-American Bar Association (IABA), the International Council for Commercial Arbitration (ICCA) and the Organization for the Harmonization of Business Law in the Caribbean (OHADAC).

5. The annex to this Note reproduces a submission from the Government of the Dominican Republic containing a summary of the second intersessional regional meeting on ISDS reform.

Annex

1. The Second Inter-Sessional Regional Meeting

1. The Meeting was opened by H.E. Nelson Toca Simó (Minister of Industry, Commerce and MSMEs, Dominican Republic) who highlighted the high number of ISDS cases involving States from the region and underlined both the importance for States to participate in the current multilateral UNCITRAL reform efforts and the need to strengthen dispute prevention mechanisms.

2. Mr. Lorenzo Jiménez de Luis (United Nations System Coordinator, Dominican Republic) and Ms. Leidylin Contreras (Deputy Director, Foreign Trade, Ministry of Industry, Commerce and MSMEs, Dominican Republic) also delivered welcome addresses, emphasising the importance of the topic, and the need to have a balanced discussion to protect and attract investors on the one hand and to take into account the interest of the States on the other.

3. The Secretary of UNCITRAL (Ms. Anna Joubin-Bret) expressed her appreciation to the Government of the Dominican Republic for having co-organized the intersessional regional meeting. She also thanked the European Union and the Deutsche Gesellschaft für Internationale Zusammenarbeit, GIZ, for their continuous financial support. She further encouraged increased participation of States from Latin America and the Caribbean to the sessions of the Working Group. The importance of transparency, experience-sharing and inclusiveness of the process was emphasized.

Session 1 – Regional experiences

4. The panels in session 1, composed of high-level representatives of Governments in Latin America and the Caribbean, discussed recent developments and initiatives in the region.

High-level panels on ISDS provisions in bilateral and regional investment treaties and on recent developments and initiatives in the region

5. The panel on ISDS provisions in bilateral and regional investment treaties was moderated by Mr. Oscar Hernández (Consultant to the Permanent Secretary of the Latin American and Caribbean Economic System (SELA)) and consisted of the following speakers: Mr. Duayner Salas Chaverri (Vice-Minister, Foreign Trade, Costa Rica); H.E. Nora Capello (Ambassador of Argentina to the Dominican Republic); H.E. Carlos Gianelli (Ambassador of Uruguay to the United States); Christopher Malcom (representing the Jamaican Ministry of Justice); Mr. Cristian Espinosa Cañizares (Director, Economic Affairs and Institutional Relations of the Ministry of Foreign Affairs and Human Mobility, Ecuador); and Ms. Cindy Rayo Zapata, (Deputy Director General of the International Trade Legal Consultancy, Secretary of Economy, Mexico).

6. The panel on recent developments and initiatives in the region, also moderated by Mr. Oscar Hernández, consisted of the following speakers: Mr. Ricardo Ampuero (President of the Special Commission that represents the Republic of Peru in International Investment Disputes, Peru); Mr. Luiz César Gasser (Director, Department of Promotion of Services and Industry, Ministry of Foreign Affairs, Brazil); Mr. Nicolás Palau Van Hissenhoven (Director of Foreign Investment and Services, Ministry of Commerce, Industry and Tourism, Colombia); Juan Álvaro Raznatovic Cruz (Head of the International Economic Law Unit of the General Directorate of Trade and Investment Agreements, Bolivia (Plurinational State of)); Roberto Álvarez Teran (Lead Specialist from General Attorney's Office, Legal Defense of the State, Bolivia (Plurinational State of)).

7. During the presentation of regional experiences, the importance of a sound legal framework to attract foreign investment and to contribute to sustainable development was underlined.

8. Specific deficiencies regarding the drafting and the substance of first-generation investment treaties were highlighted. Certain States in the region indicated that they had denounced such treaties. The specific challenges faced by small States, essentially recipients of investment, were presented. It was pointed out that both policy and technical matters were intertwined in the negotiation of investment treaties, including their ISDS provisions.

9. Regarding the most recently concluded treaties in the region, it was said that:

- They sought to balance the rights and obligations between States and investors, taking account of the developments over the past decades; in particular, they sought to strike a balance between investors' protection and the right of States to regulate;
- They included mechanisms to ensure that: (i) States would retain control over the interpretation of their treaties; (ii) investments would comply with the national legal framework; (iii) multiple proceedings and frivolous claims would be limited; and (iv) ethical requirements would be strengthened;
- They were based on principles such as accountability, fairness and transparency as these principles were key to making ISDS more predictable.

10. The example of CAFTA-DR was mentioned as a recent treaty that contributed to a more predictable legal framework, including with respect to treaty interpretation, transparency and submissions by third parties. A further illustration of a regional approach was the ISDS mechanism of the United States-Mexico-Canada Agreement (USMCA).

11. Regional attempts at creating a framework for mediation and arbitration were presented, including how to design a regional framework in a flexible manner and to tailor dispute resolution mechanisms, so as to accommodate the different views and needs of the participating States. UNASUR was highlighted as one such regional attempts to create an investment dispute resolution centre, aimed at international investment dispute prevention and dispute resolution, including amicable settlement. Another initiative that was highlighted was an advisory centre on international investment law. It was explained that as issues arising from ISDS cases for respondent States were recurrent and had similarities, the aim of a centre was to assist countries in managing investor-State disputes and in providing legal aid. It was underlined that Latin American States accounted for a large number of ISDS cases, which had been the trigger to initiate such a centre.

12. A State shared its experience regarding a State-to-State dispute settlement mechanism that it developed. That mechanism involved pre-dispute stages, such as the intervention of ombudsman services and a joint Committee.²

13. The approach adopted in the Intra-MERCOSUR Investment Facilitation Protocol signed in 2017 was also presented. It eliminated recourse to arbitration. Investors relying on the protocol have to pursue their claims via domestic judicial recourse or through existing State-to-State dispute settlement.

14. The relevance of dispute prevention mechanisms in the design of an ISDS reform was emphasized. It was pointed out that it is important for States to have the capacity to effectively handle and manage a dispute, and that it is of a particular concern to small States.

² See the Cooperation and Investment Facilitation Agreement (CIFA), which is based on three pillars: (i) risk mitigation and regulatory measures (including the notion of corporate social responsibility and sustainable development); (ii) institutional governance to achieve dispute prevention and amicable settlement through dialogue and bilateral consultations with the creation of joint committees of the treaty State Parties and the investor and an inter-ministerial body CAMEX (Cámara de Comercio Exterior), acting as Ombudsperson; and (iii) thematic agendas for cooperation and facilitation of investments (which are ongoing agendas taking place throughout the time of the investments).

15. It was highlighted that States in the region were all facing similar issues regarding ISDS and that they would therefore benefit from more exchange of experience and views, regarding in particular the novel features in new generation investment treaties. The need for capacity-building, training and dispute prevention mechanisms was also underlined.

Session 2 – Issues under consideration in UNCITRAL

Issues under consideration in UNCITRAL Working Group III

16. The chairperson of Working Group III (Mr. Shane Spelliscy) provided an overview of the concerns identified by the Working Group during the thirty-fourth to thirty-sixth sessions of the Working Group. These concerns relate to the lack of consistency, coherence, predictability and correctness of arbitral decisions, to arbitrators and decision-makers, and to cost and duration of ISDS. The chairperson indicated that the Working Group had also addressed the second stage of its mandate at its thirty-sixth session with respect to those concerns that had been identified. He clarified that any additional procedural concerns could still be brought to the attention of the Working Group. Regarding the forthcoming thirty-seventh session of the Working Group, he indicated that the Working Group would:

- Consider the question of third-party funding;
- Consider any additional concerns that might be raised by the Working group; and
- Develop a work plan to address the concerns for which the Working Group had decided that reform by UNCITRAL was desirable; States were encouraged to attend the sessions of the Working Group and to submit proposals regarding work plan and/or suggestions for reform options.

17. The meeting then proceeded to discuss the concerns and the question of desirability of reform. Advance copies of notes prepared by the Secretariat for the thirty-sixth and thirty-seventh sessions of the Working Group were provided to the participants as reference material ([A/CN.9/WG.III/WP.145](#) to [A/CN.9/WG.III/WP.159](#) and its addendum).

Panel on existing mechanisms and possible reform options to enhance consistency and correctness in arbitral decisions by ISDS tribunals

18. The panel on the lack of predictability, correctness and coherence in arbitral decisions by ISDS tribunals was moderated by Ms. Yahaira Sosa, (Vice Minister of Foreign Trade, Ministry of Industry, Commerce and MSMEs of the Dominican Republic) and consisted of the following speakers: Ms. Andrea Laura Mackielo (Secretary, General Directorate of Legal Counselling, Ministry of Foreign Affairs and Worship, Argentina); Ms. Ana María Ordoñez Puentes (Director of the Directorate of International Legal Defense, National Agency of Legal Defense of the State, Colombia); Ms. Chantal Ononaiwu (Trade Policy and Legal Specialist, Office of Trade Negotiations, The Caribbean Community (CARICOM) Secretariat); Mr. Diego Gosis, (GST LLP); Mr. Álvaro Galindo (Dechert LLP); and Ms. Natalie Reid (Debevoise & Plimpton LLP).

19. The discussion focused on the issues identified by the Working Group regarding lack of consistency, correctness, predictability and coherence of the arbitral decisions made by ISDS tribunals. At the outset, it was indicated that several factors could explain the lack of consistency in decision-making (for instance, the existence of numerous investment agreements, the ad hoc nature of ISDS tribunals and variance of parties to ISDS as well as limited possibilities of review). It was indicated that consistency and coherence are necessary, as they contribute to building a fair regime for solving disputes and are key to ensure equal treatment of the parties. Predictability would also assist States in setting investment policies.

20. Experience was then shared regarding instances of divergent decisions. It was explained that investment treaties that relied on similar concepts, with sometimes similarly worded provisions had been interpreted differently, leading to diverging outcomes. Illustrations were also given regarding multiple or concurrent proceedings, where the factual issues and the underlying treaties were similar, but the decisions made by arbitral tribunals were contradictory.

21. In addition, it was pointed out that interpretation of treaties by arbitral tribunals sometimes diverged from States' intention when negotiating the treaties. The overall lack of consistency made the outcome of ISDS cases unpredictable. During the discussions, it was also mentioned that seeking to achieve consistency should not be to the detriment of the correctness of decisions.

22. Existing tools and efforts by States to enhance predictability, correctness and coherence of arbitral decisions by ISDS tribunals were mentioned. They included:

- More precise drafting of substantive obligations in investment treaties;
- Joint interpretation of treaty provisions, binding on arbitral tribunals: even if the possibility of treaty interpretation was not provided for in investment treaties, parties were free to clarify the content of their treaty in accordance with article 31(3) of the Vienna Convention on the Law of Treaty;
- More efficient use of the "cooling-off period" in order to prevent disputes or at least avoid escalating the dispute and, preferably, being able to settle amicably;
- Proactive use of consolidation, where permitted; and
- Capacity-building and training to foster dispute prevention.

23. It was stated that other tools, such as enhanced transparency, including publication of pleadings and awards, are a means to promote consistency and correctness of decisions. In that context, the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention on Transparency) was mentioned. It was underlined that transparency would allow for cases to be properly analysed. Such analysis was said to be an important step to reach consistency and correctness.

24. It was suggested that systemic, holistic and integrated solutions should be developed so that various facets of the issues could be addressed.

25. The Caribbean Community (CARICOM) presented its organization of fifteen Caribbean States with the objective to promote economic integration and cooperation among its members since its establishment in 1973. Investors could rely on the Caribbean Court of Justice (CCJ), having jurisdiction over the CARICOM Single Market and Economy. The exclusivity of the jurisdictions created precedent and guaranteed uniform interpretation of the legal issues at stake. However, most CARICOM States have also signed investment treaties which included ISDS, with a few exceptions. In order to respond to the concerns raised, CARICOM focuses on treaty drafting and is working on a Template for Investment Chapters in External Trade, which should balance the promotion of investment and its contribution to sustainable development.

Panel on arbitrators and decision-makers

26. The panel on arbitrators (decision-makers) was moderated by Mr. Gaston Kenfack Douajni (Director, Ministry of Justice, Cameroon), and consisted of the following speakers: Ms. Stacy Martinez (Crown Counsel, International Legal Affairs, Attorney General's Ministry, Belize); Mr. Shane Spelliscy (Chairman of UNCITRAL Working Group III, General Counsel and Director, Investment and Services Law, Global Affairs, Canada); Mr. Carlos Alejandro Pérez Inclán (Specialist, Legal Directorate of the Ministry of Foreign Trade and Foreign Investment, Cuba); Ms. Cindy Rayo Zapata (Deputy Director General of the International Trade Legal

Consultancy, Secretary of Economy, Mexico); Ms. Claudia Frutos-Peterson (Curtis, Mallet-Prevost, Colt & Mosle LLP); and Mr. Patrick Pearsall (Jenner & Block).

27. The panel underlined the key role of States in designing an adequate selection mechanism for decision-makers, adequate ethical standards, as well as a robust system of disclosure.

28. It was questioned whether the current party-appointment mechanism was suitable in the ISDS context, as indeed most of the criticisms of the ISDS regime focused on party-appointment and on remuneration of arbitrators by the parties. While party-appointment was described as a key feature of commercial arbitration, its application in the context of ISDS was said to raise specific issues, that could be addressed either by defining clear ethical requirements and standards for the selection of arbitrators, or through a new system for appointing decision-makers.

29. The panel discussed ethical requirements of independence and impartiality for arbitrators. It was underlined that the independence and impartiality of arbitrators as well as the perception of the fulfilment of these requirements not only by the parties but also by the public, are of utmost importance given that issues of public interest are at stake in ISDS. The panel further discussed independence and impartiality. Qualities often required of arbitrators are expertise in public international law and investment law, as well as subject-matter expertise.

30. The question of repeat appointments of a small pool of individuals was also considered. As an illustration of the lack of diversity and repeat appointments in ISDS, it was indicated that fifteen arbitrators had been repeatedly appointed and had dealt with 60 per cent of ISDS cases. In that context, the need for States to re-examine their own practices of appointing arbitrators was mentioned. Initiatives such as the “Equal Representation in Arbitration Pledge” calling for the enhanced diversity in international arbitration as well as addressing diversity through the setting up of a list of arbitrators were mentioned.

31. Newly concluded treaties, such as the Comprehensive Economic and Trade Agreement (CETA), include codes of conduct tailored to the ISDS context, that the Working Group could consider when dealing with ethical requirements. It was said that requirements should include: independence, impartiality, availability of decision-makers, their required expertise (e.g. on public international law, in understanding public policy requirements) and diversity (regarding language, gender and geographical representation). Discussions also touched upon a number of related issues including conflicts of interest and the so-called “double-hatting”.

32. The discussions then focused on disclosure requirements and issues arising in challenge procedures. It was questioned whether the disclosure process, deriving from international commercial arbitration, was suitable in an ISDS process. The fact that different standards apply depending on the arbitration rules applicable in a case was considered to be problematic. The absence of a system-wide disclosure process was highlighted as a central issue.

Panel on costs and duration of ISDS cases and third-party funding

33. The panel on costs and duration was moderated by Mr. Jaemin Lee (Professor, Seoul National University School of Law, Republic of Korea) and consisted of the following speakers: Mr. Ricardo de Urioste (Specialized External Advisor of the Ministry of Economy and Finance, Peru); Ms. Arianna Arce (Adviser to the Directorate of Investment and Cooperation, Ministry of Foreign Trade, Costa Rica); Ms. Maria Verónica Duarte (Counsel, Legal Advisor to the Presidency of the Republic, Uruguay); Ms. Karin Kizer (Attorney Adviser, Department of State, United States); Ignacio Torterola (GST LLP), Mr. Julian Bordaçahar (Legal Counsel, Permanent Court of Arbitration (PCA)); Ms. Mallory Silberman (Arnold & Porter Kaye Scholer LLP); and Mr. Carlos Valderrama (Sidley Austin LLP).

34. Regarding costs and duration of ISDS, it was indicated that:

- Both issues were connected;
- It would be possible, to a certain extent, to take practical measures to limit cost and length of ISDS;
- However, it would not always be in the interest of States to set up shorter deadlines for certain phases of the arbitration given, for instance, the time needed for consultations among State agencies. Moreover, it was indicated that only certain categories of cost and delays were problematic and should be addressed.

35. Potential causes of increased costs and duration of ISDS cases were discussed, and included: the complexity of the case, varied expectations of parties, dilatory tactics by the parties, scheduling difficulties, possible procedural incidents, ineffective management of the case, as well as the lack of cohesion among arbitrators.

36. Possible ways to reduce costs and duration were also mentioned, and included:

- The introduction of timelines, in particular for time consuming procedural steps, such as the constitution of the arbitral tribunal and the rendering of the arbitral award;
- Active and effective case management;
- Use of means of amicable settlement including efficient use of the “cooling-off period”;
- Early dismissal mechanisms for unfounded claims and challenges;
- Measures to avoid parallel or multiple proceedings, such as requiring a claimant to waive its ability to bring claims in other forums or requiring waiver of claims from subsidiaries that the investor owned or controlled, as well as from the parent company of the investor;
- Including a statute of limitation in treaties; and
- Limitations on claims that could be brought to ISDS.

37. It was pointed out that procedural innovations that had been developed were designed to improve the process, without necessarily aiming at reducing the cost and length of the process. The example was given of provisions allowing for non-disputing party and third-party submissions that added costs, but also offered an opportunity to improve the quality of awards. The panel cautioned that the improvement of the process should not be focused solely on shortening the duration or limiting costs, but that it should also take account the public international law dimension of ISDS, and the requirements of due process.

38. As background information, the Permanent Court of Arbitration (PCA) provided data on the cost of ISDS, and indicated that, of the overall cost of a case, the arbitrators’ fees amounted to 18 per cent and the institution costs to 2 per cent, whereas the remaining 80 per cent represented parties’ legal costs. In that light, experience was shared on approaches adopted by States to mitigate legal costs. It included negotiating with law firms and imposing conditions that would ensure that costs were kept under control, and setting-up an in-house team of lawyers responsible for ISDS who would build on experience. Efforts at avoiding costs of interpretation and translation during the proceedings were also mentioned. During the discussions, the increasing cost of experts was also mentioned.

39. The importance of dispute prevention (including a joint committee of the treaty Parties) and other means of dispute resolution (in particular mediation) was highlighted. The use of cooling-off periods and mandatory consultations were also mentioned as an opportunity to prevent escalation. The panel found that these tools are currently under-utilized and efforts should be made to increase their use, though

it was also noted that unsuccessful attempts to settle could lengthen proceedings in some cases.

40. On the question of third-party funding, it was said that this practice was of great concern and that measures on disclosure of third-party funding should be taken in order to avoid potential conflicts of interest. While third-party funders would generally favour improved case management, a risk of excessive control by the third-party funders of the proceedings, which could impair possible settlements, should not be underestimated. It was noted that this topic was on the agenda of the Working Group at its thirty-seventh session.

Session 3 – Exploring the reform agenda

41. The panel on on-going reforms was moderated by Ms. Leidylin Contreras (Deputy Director, Foreign Trade, Ministry of Industry, Commerce and MSMEs, Dominican Republic) and consisted of Mr. Gonzalo Flores (ICSID), Mr. André von Walter (Team Leader, Legal Affairs and Dispute Settlement, DG Trade, European Commission); and Ms. Margie-Lys Jaime Ramírez, (Vice-Chair, Committee XVII, International Arbitration Law Inter-American Bar Association).

42. During the discussion, two main reform initiatives were presented.

43. First, ICSID presented its current reform process. It indicated that amendments were proposed in respect of each set of rules under the ICSID Convention and the Additional Facility Rules and new rules on mediation. The Working Document published on 3 August 2018 by the Secretariat of ICSID contains the complete proposals for reform. Member States and the public were invited to submit comments on the proposed amendments. On 18 January 2019, ICSID published a compendium of comments received from States and the public on the Proposal for Amendments to the ICSID Rules and Regulations. The main purpose of the ICSID reform effort is to modernize and simplify the Rules in order to make them more accessible to the users, for example by using inclusive language, by eliminating inconsistencies in the official languages of ICSID (Spanish, French and English), as well as by structuring the different sets of Rules and rearranging certain provisions. The amendment process further aims at updating the rules in order to reflect best practices, to reduce time and costs of the proceedings, and to ensure that a procedural balance is maintained between the disputing parties.

44. Amendments to the ICSID Rules and Regulations mentioned during the discussion included the following: providing for greater transparency, improving the mechanism of appointment and recusal of the arbitrators, and requiring disclosure of financing by third parties so as to avoid possible conflicts of interest. Regarding arbitrators, the proposed appointment procedure is streamlined, the declaration of the arbitrators is expanded, the recusal process is streamlined and clarified. The scope of the Additional Facility Rules is expanded, including in respect of the Regional Organization for Economic Integration (ROEI). The proposed mediation rules are aimed at complementing bilateral and multilateral treaties that provided for mediation between parties of a dispute related to an investment.

45. Second, the European Union (EU) provided a presentation of the approaches to ISDS that it submitted to the Working Group. It explained that the proposal is based on an approach adopted in recently concluded treaties. The mechanism established under these investment treaties consists of a permanent standing two-tier mechanism with full-time adjudicators appointed by the contracting parties to respond effectively to the concerns identified. Document [A/CN.9/WG.III/WP.159/Add.1](#) contains a description of the proposal tabled by the European Union.

46. During the discussions, it was explained that the different concerns identified in the Working Group are intertwined and systemic. Addressing one specific concern in a reform process could leave other concerns unaddressed. As an illustration, it was said that the lack of predictability of decisions made by ISDS tribunals has a direct impact on the cost and duration of ISDS, as recurrent issues are nevertheless

considered and argued for each case anew, due to lack of coherent and predictable framework. It was underlined that the ad hoc nature of ISDS, coupled with the absence of an appeal mechanism contributes to the lack of consistency in ISDS. Further, it was explained that the mechanisms for appointing arbitrators could create a perception of bias and contribute to the polarization of arbitrators in pro-State or pro-investor categories which, in turn, has an impact on challenges to arbitrators; challenge procedure has in turn a direct impact on cost and duration of the procedure.

47. In the discussion, it was also underlined that foreign direct investment is an important element in encouraging sustainable development and achieving the Sustainable Development Goals and that it is important therefore to ensure that ISDS reform contributes to a fair, stable, and efficient system.

Session 4 – Concluding observations and discussions of the issues raised

48. The participants were reminded of the three-stage mandate of the Working Group. They were also reminded that the focus of the deliberations at the Working Group was on reforms to procedural aspects of ISDS and not on the underlying substantive obligations in investment agreements.

49. It was concluded that work on ISDS reform has several layers and that States have to work on a multilateral, as well as on a domestic level. The need for training and capacity-building was emphasised as well as the need for a more regional interaction on the topic. In that context, the usefulness of the Inter-Sessional Regional Meeting was underlined.

50. A number of questions were raised on existing and proposed tools to address the concerns identified by the Working Group and discussed during the meeting. Discussions also concerned around the practical approach to be undertaken for such reforms.

51. It was recalled that the European Union, the Deutsche Gesellschaft für Technische Zusammenarbeit and the Swiss Agency for Development and Cooperation SDC were contributing to the Travel Trust Fund, so as to provide travel support to delegates being governmental officials from developing States to Working Group sessions. Requests for partial funding are to be addressed to the Secretariat via the Permanent Missions of the delegate's State.

52. Participants recognized that the Inter-Sessional Regional Meeting provided an opportunity for States not having participated in the Working Group to keep abreast of the recent developments to make their voice and views heard, and for States in the Latin America and Caribbean region to share experience and discuss common concerns on ISDS.

53. Participants expressed their gratitude to the Ministry of Industry, Commerce and MSMEs of the Dominican Republic and the UNCITRAL Secretariat for organizing the second intersessional regional meeting on ISDS Reform.

2. Other Matters

Briefing session on the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation) and on the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (the “Mauritius Convention on Transparency”)

54. The Secretariat of UNCITRAL carried out a briefing session on the newly adopted United Nations Convention on International Settlement Agreements Resulting from Mediation. It was explained that the purpose of the Convention was to allow parties to rely on a mediated settlement agreement and enforce it in a cross-border context according to simplified procedures. It contained reservations which would allow States to tailor its application in a flexible manner, including in the context of investor-State dispute settlement.

55. It was further explained that the Convention had been designed to become an essential instrument in the facilitation of international trade and in the promotion of mediation as an alternative and effective method of resolving trade disputes. It ensured that a settlement reached by parties would become binding and enforceable in accordance with a simplified and streamlined procedure. It thereby contributed to strengthening access to justice and the rule of law.

56. It was pointed out that, until the adoption of the Convention, the often-cited challenge to the use of mediation was the lack of an efficient and harmonized framework for cross-border enforcement of settlement agreements resulting from mediation. This was in response to this need that the Singapore Convention had been developed and adopted by the United Nations. In that context, the Convention contributed to the development of a mature, rule-based global commercial system, thereby implementing the United Nations Sustainable Development Goals, mainly SDG 16.

57. Delegations were informed that the signing ceremony for the Convention was scheduled to take place in Singapore, on 7 August 2019, and they were invited to consider joining the signing ceremony and becoming a member to the Convention.

58. Further, a presentation on the Rules on Transparency and the Mauritius Convention on Transparency, including their implementation was made. It was explained that the lack of transparency in treaty-based arbitration continued to be one of the most significant criticisms of ISDS. The benefits of transparency to strengthen legitimacy of ISDS were underlined. In the presentation, concerns relating to costs, additional preparation time and the involvement of third-party participation were addressed. It was underlined that transparency resulted in a minimal increase in ISDS costs when compared to overall costs of these proceedings.
