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

1. At its fifty-second session (Vienna, 8–29 July 2019), the Commission welcomed the Secretariat's ongoing outreach activities to raise awareness of the work of Working Group III and ensure that proceedings were inclusive and fully transparent. It also welcomed the hosting by the Government of the Republic of Korea and the Government of the Dominican Republic of intersessional regional meetings, which had provided an open forum for high-level government representatives and relevant stakeholders to discuss the issues being deliberated in the Working Group.[1]

2. The third intersessional regional meeting was held in Conakry on the afternoon of 25 September and on 26 September 2019. The meeting was jointly organized by the Ministry of Investment and Public-Private Partnerships of the Republic of Guinea, the International Organization of la Francophonie and the United Nations Commission on International Trade Law (UNCITRAL). As noted above, the purpose of the meeting was to familiarize representatives of African States with the Working Group's current areas of work, including the reform options that had been proposed by States and groups of States. The meeting also provided an opportunity to reflect on the experiences of African States and their priorities in the area of investor-State dispute settlement (ISDS) with a view to enriching the discussions of the Working Group.

3. The participation of so many States, and at such a high level, bore witness to the importance that African countries attached to reform of the investor-State dispute settlement system, as well as their engagement and commitment to actively contribute to the work of UNCITRAL. It also highlighted the need for consistency with discussions in regional organizations on the establishment of regional investment frameworks. The meeting was preceded by a workshop to exchange views on capacity-building in the area of ISDS; the workshop, which was held in French, was organized by the International Organization of la Francophonie and the Government of the Republic of Guinea in partnership with UNCITRAL.

[1] *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17* (A/74/17), para. 167.

4. The meeting was open to all States and organizations invited to the Working Group, including delegations from other regions and other relevant stakeholders. It was attended by government officials from 33 States (Angola, Belgium, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Egypt, Eswatini, France, Gabon, Gambia, Ghana, Guinea, Libya, Mali, Morocco, Mauritania, Mauritius, Namibia, Nigeria, Rwanda, Senegal, Tunisia, United States of America, Zambia and Zimbabwe); representatives of intergovernmental organizations, including the International Organization of la Francophonie, the Organization for the Harmonization of Business Law in Africa (OHADA), the Asian-African Legal Consultative Organization (AALCO), the International Centre for Settlement of Investment Disputes (ICSID), the African Legal Support Facility (ALSF) and the European Union; and representatives of non-governmental organizations, including the International Institute for Sustainable Development (IISD), the Max Planck Institute, the Nigerian Institute of Advanced Legal Studies (NIALS), Canterbury Christ Church University, the University of Geneva, the University of London, the University of Paris I, the United States Council for International Business (USCIB) and Friends of the Earth.

5. The annex to the present note reproduces a submission from the Government of the Republic of Guinea containing a summary of the third intersessional regional meeting on ISDS reform.

Annex

Third intersessional regional meeting

1. Opening ceremony and welcome addresses

1. The meeting was opened by Mr. Gabriel Curtis (Minister of Investment and Public-Private Partnerships of the Republic of Guinea), who drew attention to the high number of ISDS cases involving African States and emphasized the need to strengthen the capacities of States in the area of ISDS and the importance of States' participating in the current multilateral reform efforts of UNCITRAL.

2. Mr. Boubacar Issa Abdourhamane (Permanent Representative of the International Organization of la Francophonie to the African Union) also delivered a welcome address, in which he underscored the importance of the topic and the need for balanced and informed discussions.

3. Ms. Anna Joubin-Bret (Secretary of UNCITRAL) expressed her appreciation to the Government of the Republic of Guinea for being a co-organizer of the meeting. She also thanked the European Union, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), France and the International Organization of la Francophonie for their financial support. She encouraged African States to participate in the sessions of Working Group III and highlighted the importance of sharing information and experience at the regional level and of inclusiveness throughout the process.

2. Pre-meeting panels

4. Two panel discussions were held the day before the meeting opened to allow experts from academic and regional institutions to share views on approaches to dispute settlement under regional instruments and recent or ongoing reforms and initiatives relating to ISDS.

Panel 1: Regional approaches to dispute settlement

5. The first panel, which addressed ISDS-related provisions in regional free trade agreements, was led by Mr. Moussa Cissé (Legal Adviser to the Minister for Economic Affairs and Finance, Republic of Guinea) and comprised the following panellists: Mr. Boubacar Sidiki Diarrah (Director of Legal Affairs, Organization for the Harmonization of Business Law in Africa); Mr. Makane Moïse Mbengue (Professor of International Law, University of Geneva); and Mr. Chrispas Nyombi (Professor of International Commercial Law, Director of Research, Canterbury Christ Church University). The paragraphs below outline the initiatives and approaches that were presented.

Organization for the Harmonization of Business Law in Africa

6. The mission of the Organization for the Harmonization of Business Law in Africa (OHADA) – as entrusted to it by its 17 member States – is to provide for legal and judicial security and, thereby, an enabling business environment through a simple, modern and appropriate body of harmonized business law to facilitate the activities of private companies; the implementation of appropriate judicial procedures and the training of legal professionals; and the promotion of arbitration as a means of settling commercial disputes.

7. OHADA adopted its first uniform act on arbitration law in 1999. On 24 November 2017, its Council of Ministers, meeting in Conakry, adopted the revised Uniform Act, the revised Arbitration Rules of the Common Court of Justice and Arbitration and the Uniform Act on Mediation. Those texts entered into force on 15 March 2018.

8. As a result of those revisions, the use of mediation has been strengthened and the OHADA arbitration framework has been brought into line with international

practices through, for example, recognition of the independence of arbitral authorities in relation to the national legal system. States, local governments, public institutions and any public-law corporation may now be parties to arbitration. The Uniform Act also authorizes investment-related instruments, including bilateral and multilateral investment treaties and national legal frameworks such as investment codes, to refer to the OHADA arbitration framework as a means of settling disputes, thus recognizing the arbitrability of investor-State disputes.

Other regional and national initiatives

9. The ISDS-related provisions of various regional investment initiatives were presented. In 2012, the Southern African Development Community had prepared a model treaty that contained innovative provisions and established and enhanced the balance between the various stakeholders' interests. Other regional organizations, such as the Common Market for Eastern and Southern Africa, the Economic Community of West African States (ECOWAS) and the East African Community have followed that approach by developing model treaties and investment codes that established more balanced ISDS mechanisms (ECOWAS had done so in 2018, for example).

10. The Pan-African Investment Code established, at the continental level, provisions on ISDS that were adapted to the African context, placing emphasis on arbitration being conducted in Africa and the use of African arbitrators. However, African Union member States had been reluctant to adopt the Code in the form of a binding treaty and ultimately adopted it as a model. Mention was made of the possibility of using the Code as a point of reference for the work on investment currently being carried out by the African Union in the context of the African Continental Free Trade Area.

11. The Agreement Establishing the African Continental Free Trade Area and the Protocol on Rules and Procedures on the Settlement of Disputes were adopted by the Assembly of the African Union in March 2018 and entered into force in 2019. The Protocol establishes a body for settling disputes between States – known as the dispute settlement mechanism – that is based on the dispute settlement system of the World Trade Organization. The Protocol contains provisions on various dispute settlement methods, such as confidential consultations, use of good offices, conciliation, mediation, expert panels and arbitration. The details of how the mechanism for settling investment disputes will operate are to be decided during the second phase of negotiations.

12. Reference was also made to the Tripartite Free Trade Area, which is aimed at fostering economic and social development and creating a large single market with free movement of goods and services in order to promote interregional trade. The Area was created in 2015 by States members of the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC). Negotiations for the main agreement and its annexes were concluded in May 2017. The agreement will enter into force once it has been ratified by 14 member States (only four have ratified it to date). Under the agreement, known as the Agreement Establishing a Tripartite Free Trade Area, disputes should, in the first instance, be resolved through consultations and negotiations in good faith. A dispute may be referred to the dispute settlement body only following unsuccessful negotiations. Pursuant to the Agreement, only States may submit disputes to the dispute settlement body. However, at the regional economic community level, ISDS is provided for in both EAC and COMESA. In the event of any inconsistency between the Agreement and the treaties and instruments of COMESA, EAC and SADC, the Agreement will take precedence. As the agreements of COMESA, EAC and SADC are still in force, the way in which the dispute settlement mechanisms of the three regional economic communities will interact with the dispute settlement body of the Agreement Establishing a Tripartite Free Trade Area will require further clarification.

Panel 2: Recent or ongoing ISDS reforms

13. The second panel examined recent or ongoing reforms. The discussion was moderated by Ms. Omotese Eva (Deputy Director, Federal Ministry of Justice, Nigeria) and comprised the following panellists: Mr. Salim Moollan (Chair of the forty-fourth session of UNCITRAL (2011) and delegate of Mauritius in Working Group III); Ms. Aurelia Antonietti (Senior Legal Adviser, International Centre for Settlement of Investment Disputes); and Mr. Chrispas Nyombi (Canterbury Christ Church University). Reforms in the areas described below were presented.

UNCITRAL work in the area of transparency

14. UNCITRAL adopted the Rules on Transparency in Treaty-based Investor-State Arbitration in 2013. This set of procedural rules is aimed at making information on investor-State arbitration under investment treaties available to the public. To enable the Rules to be applied to investment treaties concluded before the entry into force of the Rules (1 April 2014), the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (New York, 2014), also known as the Mauritius Convention on Transparency, was developed. The Convention, which entered into force in October 2017, provides a mechanism for applying the Rules to investor-State arbitration conducted under investment treaties of a State party to the Convention.

15. Both of those instruments were developed by UNCITRAL and gave rise to the Working Group's mandate. It was noted that the discussions provided an important lesson for the future: they demonstrated that reform of the ISDS system was possible and that the fragmented ISDS regime could be unified through a convention that could be applied to existing treaties, as demonstrated by the Mauritius Convention on Transparency.

Reform of the International Centre for Settlement of Investment Disputes rules

16. The ongoing reform of the International Centre for Settlement of Investment Disputes (ICSID) rules was also presented. The Centre began the process of amending its rules in October 2016. The objectives of this reform are (i) to modernize the Centre's procedure in the light of the experience acquired; (ii) to simplify the rules, streamline the language and rectify discrepancies between the different language versions of the rules; (iii) to improve the time frames and reduce the costs of the procedure while maintaining an appropriate balance between investors and States; and (iv) to enable greater use of technology. The main aspects addressed by the reform are: the swift and cost-effective conduct of proceedings; challenge of arbitrators; handling of conflicts of interest of arbitrators; expedited arbitration procedure; procedure for the preliminary rejection of claims; amicable settlement of disputes; consolidation and coordination of arbitration proceedings; allocation of costs; security for costs; handing down of awards in a timely manner; and consistency of the Centre's annulment decisions. The draft revision also includes new rules on investor–State mediation.

The bilateral investment treaty between Nigeria and Morocco of 2016 as an example of a recent treaty

17. In 2015, Nigeria drew up a model bilateral investment treaty that was intended to respond to the criticism the current ISDS system had received in recent years. The model treaty served as the basis for the bilateral investment treaty concluded between Nigeria and Morocco in 2016. That agreement belongs to the second generation of bilateral investment treaties and draws on the recommendations of the United Nations Conference on Trade and Development (UNCTAD), namely, the Investment Policy Framework for Sustainable Development and the road map for the reform of international investment agreements. The treaty provides for the establishment of a joint committee that is responsible for the administration of the agreement, comprises representatives of Nigeria and Morocco and must seek to resolve disputes between

investors and States. Only if the joint committee fails to resolve a dispute within six months may the investor engage in international arbitration – upon the exhaustion of local remedies (art. 26.5).

3. First session: Regional experiences

Ministerial round table: ISDS reform – exchange of views on the African perspective

18. The ministerial round table on "ISDS reform – exchange of views on the African perspective" was moderated by Mr. Boubacar Issa Abdourhamane (Permanent Representative of the International Organization of la Francophonie to the African Union) and comprised the following panellists: Mr. Gabriel Curtis (Minister of Investment and Public-Private Partnerships, Republic of Guinea); Mr. Abdoulaye Magassouba (Minister of Mines and Geology, Republic of Guinea); Mr. René Bagoro (Minister of Justice, Burkina Faso); Mr. Amadeu de Jesus Alves Leitão Nunes (State Secretary for Trade, Angola); Mr. Aristide Ebang Essono (Roving Ambassador for Economic Partnership Agreements and Trade Negotiations, representative of Gabon); and Mr. Fabien Talon (First Counsellor of the French Embassy in Guinea, representative of the French Ambassador in Guinea).

19. The ministerial round table explored ways to develop concrete ISDS reforms.

20. Participants stressed the need for a robust, legitimate and acceptable system for settling investment disputes while also ensuring a positive business environment capable of attracting and protecting investors. They also highlighted the role of foreign direct investment in promoting sustainable development and achieving the related goals and, therefore, the importance of a fair, stable and effective ISDS system.

21. The participants recalled the concerns that had been identified during discussions in the Working Group, in particular, the impact of arbitration on national budgets, the lack of predictability and the difficulty of assessing the risks associated with any investment, for both States and investors.

22. One area in which Governments were currently seeking to take action was prevention, as a means of avoiding arbitration. This could provide avenues for reflection on ways to improve international cooperation, for example, by choosing serious investors, ensuring well-drafted contracts between States and investors and negotiating modern bilateral investment treaties with other States. In this context, participants noted that reform efforts should not focus solely on systemic reform, but should also consider improvements and reforms to the existing system that were achievable in the short term.

23. With regard to the reform process, participants emphasized the need to cooperate and participate actively in the work of the Working Group, in particular, at the stage at which solutions were developed. They stressed the need to mobilize more resources and increase their cooperation in order to take an active part in ongoing and future discussions, and to contribute actively to the development of reforms, the aim being to ensure that discussions on reform options highlighted priorities and that the voice of African countries was heard. Lastly, the importance of consistency with regional investment initiatives under negotiation, including in the African Union, was recalled.

4. Second session: The various reform options

Introductory presentations

24. The second session was devoted to the various reform options and began with introductory presentations by Mr. André Abel Barry (Programme Specialist, International Organization of la Francophonie) and Mr. Shane Spelliscy (Chair of Working Group III, General Counsel and Director, Trade Law Bureau, Global Affairs Canada).

Workshop on capacity-building

25. The workshop to exchange views on capacity-building in the area of ISDS, which was held in French, provided an opportunity to discuss legal issues related to ISDS in the context of investment in Africa. Participants took stock of the reform work and engagement of French-speaking African States in that respect and of the specific proposals for reform on the basis of consideration of the topic at meetings convened by the International Organization of la Francophonie. The aim was to ensure that African States had the same level of understanding of the legal, institutional and strategic issues relating to ISDS. It was emphasized that African States should develop "ISDS awareness" guided by an approach of demystification, democratization and "domestication" and by appropriate actions, including capacity-building. Those concerted actions should enable States to share their concerns, both formally and informally, in order to develop a common position within the Working Group, which could take the form of a paper submitted to the Working Group by the International Organization of la Francophonie.

Discussions in the Working Group

26. The Chair of the Working Group, Mr. Shane Spelliscy, provided an overview of the discussions since November 2017 and the commencement of work. The Group had reached the third phase of the mandate given to it by the Commission, namely, the development of solutions. During the first and second phases of its mandate, the Group had identified concerns relating to ISDS, for which it had decided that it was desirable for UNCITRAL to develop reforms. Those concerns relate to the lack of consistency, coherence, predictability and correctness of arbitral decisions; the choice, role and conduct of arbitrators and decision makers (including their diversity); and the cost (including third-party funding) and duration of ISDS cases. At its most recent session, in April 2019, the Working Group agreed to consider and develop multiple potential reform solutions simultaneously.

Round table: Detailed presentations and general discussion of the reform proposals submitted to the Working Group

27. The round table, which examined the reform proposals submitted to the Working Group, was moderated by Ms. Anna Joubin-Bret (Secretary of UNCITRAL) and comprised the following panellists: Ms. Aurelia Antonietti (Senior Legal Adviser, International Centre for Settlement of Investment Disputes); Mr. Colin Brown (Directorate General for Trade, European Commission); Mr. Shane Spelliscy (Chair of Working Group III, General Counsel and Director, Trade Law Bureau, Global Affairs Canada); Ms. Nicole C. Thornton (Chief of Investment Arbitration, Department of State, United States of America); Ms. Aminata Traoré (Higher Council for Private Sector Development, Ministry for the Promotion of Private Investment, Small and Medium-Sized Enterprises and National Entrepreneurship, Mali); Mr. Gaston Kenfack Douajni (Director of Legislation at the Ministry of Justice, Chair of the forty-ninth session of UNCITRAL and President of the Association for the Promotion of Arbitration in Africa, Cameroon); Ms. Emilia Onyema (University of London); Mr. Mathias Audit (University of Paris I); and Ms. Judith Knieper and Mr. David Probst (UNCITRAL secretariat). The reform proposals outlined below were presented on the basis of the proposals contained in documents A/CN.9/WG.III/WP.166 and A/CN.9/WG.III/WP.166/Add.1.

Advisory Centre

28. The following issues were discussed in relation to the proposal to create a multilateral advisory centre modelled on the centre established by the World Trade Organization:

- The services that the centre could provide (such as assistance in organizing a defence, support during dispute settlement proceedings and advisory services)

and the beneficiaries of those services (least developed States, developing States and small and medium-sized enterprises)

- The form and structure that could ensure the centre's independence and protect it from any outside influence

- How to ensure its financing

System for the review of arbitral awards and appeal mechanism – court of appeal

29. During discussions on the proposal made by a number of States to establish a system for reviewing awards or an appeal mechanism, the limitations of existing award annulment systems were recalled. The creation of an appeal mechanism modelled on the Appellate Body of the World Trade Organization was suggested. The establishment of such a mechanism raises various issues, including in respect of its structure, its financing and the organization of the procedure. The question of the jurisdiction of the mechanism over arbitral awards and awards of a court of first instance and compatibility with the ICSID Convention was discussed.

Multilateral court

30. The European Union presented the proposal it had submitted to the Working Group in document A/CN.9/WG.III/WP.159/Add.1 and which relates to the establishment of a standing two-tier mechanism with full-time adjudicators appointed by the treaty parties. The proposal has already been adopted by the European Union in treaties concluded recently. The representative of the European Union explained that under the proposal, only a standing mechanism could address all of the concerns identified by the Working Group.

Arbitrators and decision makers

31. The lack of diversity in relation to the selection and appointment of arbitrators was highlighted. It was emphasized that the lack of diversity among arbitrators is linked to the lack of diversity among counsel, and that African States should therefore take the initiative in appointing African counsel (working independently or for international firms) who could have an influence over the selection of arbitrators and appoint African arbitrators. It was proposed that African States develop a list on which to draw for the appointment of counsel and arbitrators, as well as mediators, conciliators and experts. The suggestion was made that African States could form, at the continental or regional level, groups of African experts who could share their experiences with representatives of African Governments and with each other. Lastly, a number of initiatives were presented, such as "African Promise" and "Equal Representation in Arbitration Pledge".

Development of a code of conduct

32. It was noted that a joint working paper on a code of conduct was being prepared by UNCITRAL and ICSID as part of the work of the Working Group. The goal is to harmonize the obligations and duties of decision makers in ISDS proceedings and establish more concrete rules than those in existing instruments. The issues raised, which would arise in the preparation of such a code of conduct, are: the integrity, independence and impartiality of arbitrators; diligence and efficiency; confidentiality; competence and qualification; and remuneration. It was emphasized that one of the questions to be addressed was the form the instrument would take, in particular, whether it would be binding or non-binding in nature. With regard to ICSID, it was explained that consideration would need to be given to whether to link the code to the Centre's amended rules or keep them separate. That decision would be made by States members of ICSID. The code could be added to the existing obligations of arbitrators.

Interpretation of investment treaties by the treaty parties, and enhanced control over treaty interpretation

33. On the premise that States are particularly well placed to provide arbitral tribunals with authentic and authoritative interpretations of their treaties, three mechanisms were discussed: joint interpretation, which prevents errors in treaty interpretation in arbitral awards; submissions by a non-disputing party to a treaty on issues of treaty interpretation; and the possibility for disputing parties to submit comments on aspects of the draft award that relate to the interpretation of the treaty, which the tribunal can take into account in the final award. Those mechanisms were described as means of enabling parties to have greater control over the correct application of treaties and the provision of relevant information to the tribunal, thereby improving the decision-making process. The increased transparency of the arbitral process in turn enhances the legitimacy of ISDS. In the course of those discussions, it was recalled that article 5.1 of the Rules on Transparency expressly provides for such submissions and rule 37 of the ICSID Arbitration Rules also provides guidance to tribunals on how to use them.

Alternative dispute settlement methods, including mediation

34. The proposal to reform ISDS through the strengthening of dispute prevention measures such as mediation was mentioned by a large number of States in their written submissions to the Working Group. At present, the majority of international investment agreements already refer to “amicable settlement” or even, in some cases, explicitly to mediation, without specifying the approach that parties should adopt. The discussion focused on the organization within States that the use of mediation might require. For example, State representatives in a proceeding must have the appropriate authority to negotiate and conclude agreements on the State’s behalf and be duly mandated for that purpose, but must not be held liable as a result of the agreement. Lastly, a question was raised regarding whether the public interest and the related principle of transparency should apply in mediation proceedings, since the confidentiality of discussions is a key factor in achieving a successful outcome. With regard to the enforcement of settlement agreements resulting from mediation, it was highlighted that the United Nations Convention on International Settlement Agreements Resulting from Mediation (also known as the “Singapore Convention on Mediation”), which had recently been opened for signature and had already been signed by 51 States, served as an appropriate legal basis.

Recourse to national courts

35. It was indicated that the requirement for investors to exhaust local remedies before submitting their claims to arbitral tribunals could offer significant benefits in terms of the cost and duration of proceedings. However, investors should be able to have full confidence in the neutrality of national courts, without fear of biased decisions or political pressure. That would mean strengthening the justice system to give national courts greater credibility through, in particular, the presence of suitably qualified and independent judges (such as in the case of international commercial courts or chambers), as well as the administrative organization of courts so as to ensure the timely consideration of cases. The establishment of a mandatory preliminary mechanism to check the ethics of arbitrators, coupled with an evaluation system following the delivery of decisions was proposed, based on transparency and the publication of all decisions.

Procedures for dealing with unmeritorious claims by investors

36. With respect to the proposal to develop procedures to address unmeritorious claims, it was noted that some treaties (notably, those concluded by the United States) and a number of arbitration rules provided for the expedited processing of frivolous or unmeritorious claims. The ICSID Arbitration Rules establish that a party may file an objection related to jurisdiction or to a claim that is manifestly without legal merit (rule 41 (5)). Rules 43 and 44, as proposed by the Centre as part of the reform process,

are arbitration rules that enable arbitral tribunals to obtain further information in order to examine a claim that is manifestly without legal merit.

Parallel or multiple proceedings against a State

37. With regard to parallel or multiple proceedings, it was recalled that foreign investment could take the form of a company in the host State or equity participation in a company already registered in the host State. Therefore, there are theoretically two entities that may file a claim against a State in relation to the same damage: the locally based company and its foreign shareholder(s). Such parallel proceedings increase the risk of inconsistent arbitral decisions and the payment of compensation twice, which is difficult to justify, while increasing the financial burden on respondent States. Possible solutions were discussed by the delegations present. It was noted that most national laws do not permit shareholders to claim compensation for the damage suffered by the company in which they hold shares, and it was proposed that that rule could, if necessary, be extended to investment arbitration.

Procedures to minimize the cost and duration of proceedings

38. It was indicated that the costs of ISDS are particularly high for States, in particular, developing States. A number of options were discussed to reduce those costs, including efforts to (i) reduce parallel proceedings, which require the respondent State to be represented before multiple arbitral tribunals, involving significant fees for legal representation; (ii) favour expedited arbitration for non-complex disputes involving smaller claims; (iii) encourage parties to engage in mediation, which is much faster than arbitral proceedings (in this context, it was recalled that African States were able to accede to the Singapore Convention on Mediation); (iv) improve the distribution of costs between the parties, so that the losing party must bear the full costs of the proceedings (this might also discourage parties from filing dilatory claims and it could be applied as well to a possible appeal court mechanism).

Third-party funding

39. The discussion on third-party funding began with a discussion of its definition and the problems resulting from its use. Two possible solutions were considered: an outright ban on the use of third-party funding in investor-State disputes, or the regulation of such funding. The potential consequences of the failure to observe such a ban were discussed. With regard to the regulation of third-party funding, participants discussed its possible limitation to impecunious claimants and the introduction of a disclosure obligation. The scope of any such disclosure obligation was also discussed.

5. Concluding remarks

40. Participants acknowledged that the intersessional regional meeting had provided an opportunity for States that had not yet participated in the Working Group to keep abreast of recent developments, express their views and discuss common concerns relating to ISDS. Nevertheless, the meetings were not a replacement for active participation in the deliberations of the Working Group. In that context, it was recalled that the European Union, the Deutsche Gesellschaft für Internationale Zusammenarbeit and the Swiss Agency for Development and Cooperation contributed to the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL in order to help delegates representing developing countries to participate in Working Group sessions. Requests for partial funding should be addressed to the Secretariat through a note verbale sent by the permanent mission to the United Nations.

41. Participants expressed their gratitude to the Government of the Republic of Guinea, the International Organization of la Francophonie and the UNCITRAL secretariat for organizing the third intersessional regional meeting on ISDS reform.