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Settlement of commercial disputes: draft UNCITRAL rules on transparency in treaty-based investor-State arbitration

Compilation of comments by Governments

Addendum

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II. Comments received from Governments

Qatar

[11 June 2013]

The State of Qatar ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention, 1958) on 30 December 2002.

It would be important, in the opinion of the State of Qatar, to take into consideration the need to establish clear rules on transparency in treaty-based investor-State arbitration, given the significant volume of Qatar's foreign investments, as illustrated by the number of agreements on the promotion of mutual investments that Qatar has signed with other States. Moreover, a provision would often be included in such agreements along the following lines: the arbitral tribunal that is established for the settlement of disputes shall apply the UNCITRAL Arbitration Rules of 1976, that is, in the case of resorting to settlement of disputes by way of arbitration.

The consideration of the documents attached to the above-mentioned note verbale made it clear that a draft for the first reading with respect to the preparation of a legal standard on transparency in treaty-based investor-State arbitration, during the fifty-fifth session of the Working Group, which was held in Vienna from 3 to 7 October 2011, had been developed. That draft was then revised in order to proceed with the second reading during the fifty-sixth and fifty-seventh sessions of the Working Group, which were held from 6 to 10 February 2012 and from 1 to 5 October 2012.

The draft for the second reading, contained in working paper A/CN.9/WG.II/WP.176 and Add.1, of 30 November 2012, referred to certain outstanding issues, which were open to comments by States for the third reading of the rules on transparency. Those issues together with the pertinent comments by the competent authority of the State of Qatar are presented below.

1. *Article 1 (1), on the scope of application and the applicability of the legal standard on transparency.* The aforementioned document contained three options. The authority considered that option 2 would be the most appropriate, because it would lead to the application of the rules on transparency with regard to agreements initiated under the UNCITRAL Arbitration Rules following the entry into force of the rules on transparency. It would also provide the State, with regard to agreements concluded before the date of enforcement of the rules on transparency, with the right to follow one of two methods: either both parties would explicitly agree to apply the rules on transparency in arbitration or the agreement would be amended in order to allow for the application of those rules.

2. *Article 5 (1), on the arbitration tribunal allowing submissions from a non-disputing party to the treaty.* In that regard, the authority considered that the words "may allow" should be used in order to ensure that such permission would not be granted automatically by the arbitral tribunal without consultation with the disputing parties.

3. *Article 6 (1), on hearings being public.* The competent authority of the State of Qatar supported the view that a disputing party should have a unilateral right to hearings being closed in order to protect investors in case they did not wish any information concerning their investments in States involved in a dispute to be disclosed.

4. *Article 7 (2) (c), concerning the third type of information that is protected and considered an exception to the rules on transparency.* The competent authority considered that option 1 would be the most appropriate to ensure the sovereignty of the State and to ensure non-disclosure of any information protected by the applicable laws or rules of the State. With respect to the proposal concerning the addition of two new paragraphs, however, there would be no objection to that addition, as it would provide further protection for such information.

5. *Article 8, concerning the establishment of a repository of published information.* The authority considered that option 1 would be the most appropriate, since it would underlie the idea that UNCITRAL should undertake the task of maintaining the published information and would thus be considered a registry to which arbitral tribunals would turn in case there was a need for such information in the future.
