



UNCTAD High-level International Investment Agreements (IIA) Conference 2018

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Secretary-General, ICSID

Thank you, co-chairs. This conference is such an important opportunity to share new ideas and approaches to international investment agreements and dispute settlement procedures, and I am honored to provide a brief update from ICSID.

As many of you are aware, ICSID was established over 50 years ago with the ICSID Convention—a treaty that today has been ratified by 154 States.

ICSID provides procedural rules and case-management services for the settlement of disputes by conciliation, arbitration or fact-finding. The majority of all known international investment disputes have been administered by ICSID—over 680 cases to date. So, at the procedural level, ICSID's rules are very important.

The ICSID rules have occasionally been updated, and we are currently in the process of the 4th amendment to the rules. This is by far the most extensive review of the rules in their history.

We started the process by asking States and the public for their ideas. We wanted to know what topics they thought were important to address in the revised rules. Not surprisingly, many of the issues that are at the forefront of the discussion on reform of investor-State dispute settlement were raised: transparency; third-party funding; codes of conduct for arbitrators, etc.

In August of this year, the ICSID Secretariat published a Working Paper that proposes specific amendments to the rules. It draws on the external input we received, as well as the Secretariat's own extensive experience with administering cases under the ICSID rules.

In September, ICSID Member States gathered for an in-depth discussion of the proposals. Over two days we heard detailed and highly constructive comments. I should mention that the working paper is over 900 pages, so simply preparing for the meeting was a substantial investment in time and energy.

This meeting, and subsequent discussions I have had with State officials on the proposals, reaffirm my own sense that States are truly committed to the continued modernization of ISDS substance and procedure. States want a more integrated system, with sustainable development objectives providing the underlying foundation. And they are considering the practical steps needed to achieve that objective.

The proposals presented in the Working Paper are very much in concert with this goal. They also, I should note, align with the three goals UNCTAD has identified for improving ISDS mechanisms.

That is to:

- Enhance the legitimacy of the ISDS system;
- Enhance the contracting parties' control over the interpretation of their treaties and;
- To streamline the process and make it more efficient.

Against that backdrop, the proposed amendments would:

- Increase access to case-related materials—i.e. awards, decision and orders;
- Require disclosure of third-party funding to avoid potential conflicts of interest;
- Introduce an entirely new set of rules on mediation, along with more user-friendly versions of the rules for conciliation and fact-finding;
- Enhance the declaration of independence and impartiality for arbitrators;
- And include numerous measures to reduce the time and cost of proceedings.

As always, the devil is in the detail, which is why feedback on the proposals from the full range of stakeholders is so important. The ICSID website has extensive material that explains the proposed changes. And we are encouraging written comments on the proposals until the end of this year, which will be published on the ICSID website. And of course, I and my colleagues are also available to discuss the proposals with you.

With that, I hand the floor back to our co-chairs, and look forward to the rest of the discussion.