



PROPOSAL OF COLOMBIA

**What other reform solutions to the SCIE
system could be developed:**

The MLI as a model for UNCITRAL

UNCITRAL
Working Group III: Investor-State
Dispute Settlement Reform (SCIE)



1.



GENERAL INTRODUCTION

GTIII: WORK DONE UNTIL NOW

- Identification of concerns that need a solution:
 - ✓ Lack of uniformity, consistency, predictability, and correction of the decisions issued by arbitral tribunals in investor-state disputes.
 - ✓ Concerns related to arbitrators and decision-makers.
 - ✓ Concerns related to the cost and duration of SCIE processes.
 - ✓ Other issues.



1.



GENERAL INTRODUCTION

WHAT FOLLOWS THEN?

- Identify potential procedural approaches to implement measures that address concerns.
- Colombia proposes a **methodology**:
.....
 - ✓ Replicate the model of the MLI “*Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*” of the OCDE



2.

INTRODUCTION TO MLI

How MLI Works?

- i. Specify the DTAA to which the MLI applies.
 - ✓ To date, 2,500 DTAA have been listed by signatory countries.
 - ✓ They represent a match of 1,200 DTAA.
- ii. It requires fulfillment with the provisions that constitute minimum standards.
 - ✓ The minimum standard can be met through several alternatives.
 - ✓ The MLI does not require compliance through a specific alternative.



INTRODUCTION TO MLI

How MLI Works?

- iii. Gives the possibility of not applying the provisions to all DTAA
 - ✓ If a substantive provision does not reflect a minimum standard, flexibility is given to not apply that provision
 - ✓ This is done through reservations
- iv. It allows not to apply provisions concerning DTAA that contain provisions with specific characteristics.
- v. It gives the possibility to choose optional and alternative provisions.



3.



THE MLI AS A MODEL FOR UNCITRAL

The MLI model would be viable to replicate in UNCITRAL - common points.

Network
agreement :
+3 thousand DTAA

Around 3
thousand IIA

Fragmentation
of both systems
given the vast
network of
agreements

Necessity and
convenience of
a multilateral
solution

Practical,
flexible and fast
solution without
renegotiation of
bilateral
agreements

Concerns are
the basis of
reform

The measures to
be implemented
would stop the
abusive use of
treaties and
"treaty
shopping"



4.



THE PROPOSAL OF COLOMBIA

To replicate the MLI model, the GTIII will require:

Define which issues would be part of the reform

Define which topics would be classified as minimum standards (negotiation process itself)

CONVENCIÓN MULTILATERAL PARA IMPLEMENTAR MEDIDAS RELACIONADAS CON TRATADOS DE INVERSIÓN

Preamble

PART I: SCOPE AND INTERPRETATION OF TERMS

Article 1 Scope of the Convention

Article 2 Interpretation of Terms

PART II: LACK OF UNIFORMITY, CONSISTENCY, PREDICTABILITY, AND CORRECTION OF THE DECISIONS ISSUED BY ARBITRAL TRIBUNALS IN INVESTOR-STATE DISPUTES.

Article 3 Interpretation of Substantive law*

Article 4 Mechanisms to Respond to the Lack of Uniformity and Correction of Decisions*

Article 5 Framework for Processing Multiple Processes*

PART III: ARBITRATORS AND DECISORS

Article 6 Standards of Independence, Impartiality and Conflict of Interest*

Article 7 Mechanism for disqualification of Arbitrators*

Article 8 Appointment Mechanisms*

Article 9 Competence and Qualifications of the Arbitrators*

PART IV: COST AND DURATION OF SCIE PROCESSES

Article 10 Mechanisms to Face the Cost and Duration of SCIE Processes

Article 11 Mechanism for Unjustified or Unfounded Claims

Article 12 Allocation of Costs by the Courts

Article 13 Cost Collection Guarantees

PART V: OTHER ISSUES

Article 14 Third Party Financing*

Article 15 Exhaustion of the internal legal remedies*

Article 16 Decision Standards*

Article 17 Valuation Methods*

Article 18 Anti-abuse clauses*

Article 19 Counterclaims *

Article 20 Advisory Center on International Investment Law (ACIIL)

Article 21 Appellate Body*

Article 22 Multilateral Investment Court

PART VI: FINAL AND INSTITUCIONAL PROVISIONS



5. CONCLUSION

- The crisis facing the investment protection regime today requires joint, flexible and viable solutions.
- Replicating the MLI model can lead to a fast and plausible multilateral outcome to implement the solutions provided by the GTIII, for its high degree of flexibility.
- Colombia's proposal is not a solution for every concern. It is a methodology on how to approach them.
- Substantive issues should be addressed in upcoming UNCITRAL sessions.