

The Mauritius Convention on Transparency: A Model for ISDS Reform?

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“Multilateral instrument on ISDS reform”
UNCITRAL / ISDS AF Webinar, 23 April 2020

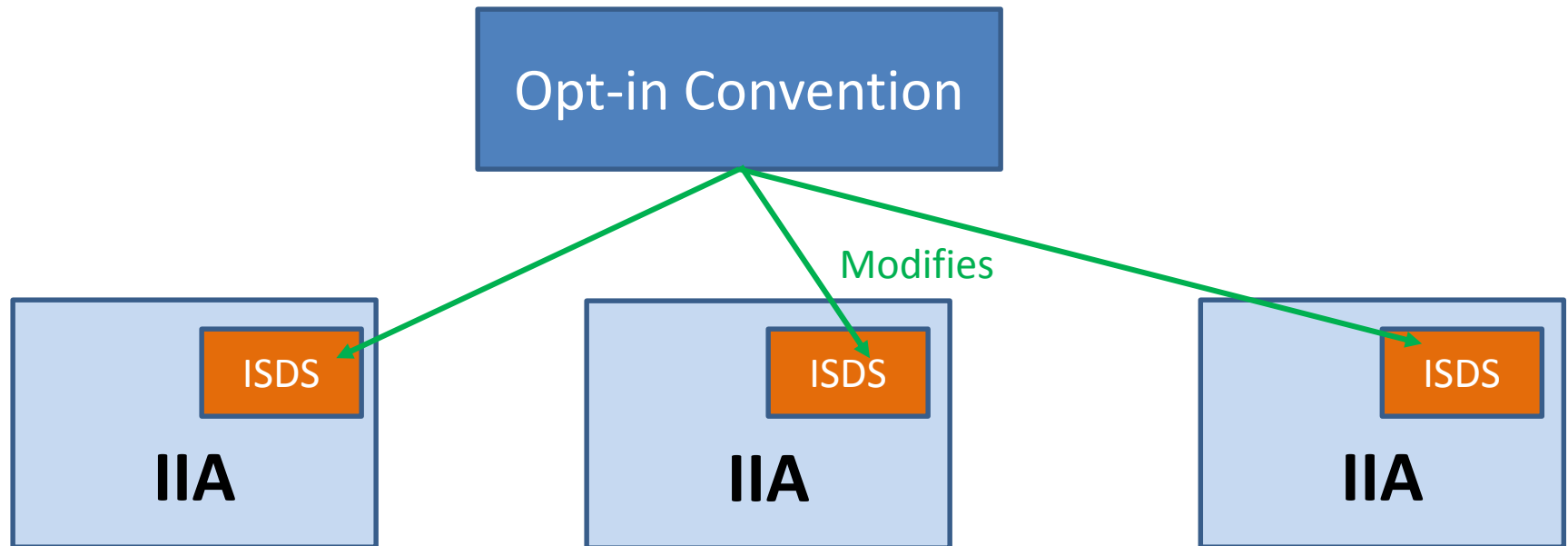
Background

- 2013: UNCITRAL adopts **Transparency Rules**
 - Apply to UNCITRAL arbitrations under IIAs concluded after 1 April 2014 (“subsequent” treaties)
- 2014: UN GA adopts **Mauritius Convention**
 - “Extends” Transparency Rules to IIAs concluded before 1 April 2014 (“existing” treaties)

Mauritius (or “Opt-in”) Convention Approach

- No need for treaty-by-treaty amendment (3,000+ IIAs)
- Modifies existing IIAs through one single multilateral instrument (Article 30 VCLT)
- Outcome: Opt-in Convention and IIAs co-exist

An Opt-in Convention for Broader ISDS Reform?



Mauritius Convention Approach

Lessons Learnt:

- Efficient mechanism
- “Content” before “instrument to extend content”
- Flexibility
 - To modulate State’s involvement in reforms

Opt-In Convention: Flexibility

- Reservations
- Declarations
 - Example: Article 287 UNCLOS

<p style="text-align: center;"><i>Article 287</i> <i>Choice of procedure</i></p> <p>1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:</p> <ul style="list-style-type: none">(a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;(b) the International Court of Justice;(c) an arbitral tribunal constituted in accordance with Annex VII;(d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein. <p>4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.</p> <p>5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.</p>
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See CIDS Report, 2016,
§§ 262-264

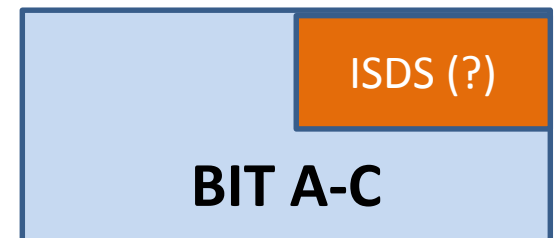
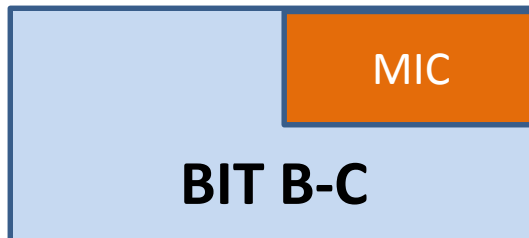
Opt-In Convention: Flexibility



OPT-IN CONVENTION

State Declarations (examples)

- State **A** → Only Appellate Mechanism (AM)
- State **B** → MIC and AM (in order of priority)
- State **C** → Only MIC



Further information

- CIDS Report, “Can the Mauritius Convention serve as a model for the reform of investor-State arbitration in connection with the introduction of a permanent investment tribunal or an appeal mechanism? Analysis and roadmap”, Sections IV and VII, by Gabrielle Kaufmann-Kohler and Michele Potestà, available at https://uncitral.un.org/sites/uncitral.un.org/files/mediadocuments/uncitral/en/cids_research_paper_mauritius.pdf
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