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Summary of the inter-sessional meeting on investor-State dispute settlement (ISDS) reform submitted by the Government of Belgium

This Note reproduces a submission from the Government of Belgium containing a summary of the seventh intersessional meeting on ISDS reform held on 7 and 8 March 2024 in Brussels. The English version of the summary was submitted on 25 March 2024 and the text received by the Secretariat is reproduced as an annex to this Note.

Annex

Introduction

1. The seventh intersessional meeting of Working Group III of the United Nations Commission on International Trade Law ("UNCITRAL"), dealing with investor-State dispute settlement ("ISDS") reform, was held on 7 and 8 March 2024 in Brussels, Belgium (hereinafter the "Meeting").

2. Jointly organised by the Belgian Presidency of the Council of the European Union ("EU") and the UNCITRAL Secretariat, with the support of the EU, the Meeting was attended by 274 in-person and virtual participants, comprising of 225 UNCITRAL representatives and 49 attendees from the wider public. Simultaneous interpretation between English and French was provided during the Meeting.

3. The first day featured a series of public panel debates reflecting upon how the reform options of a standing mechanism for the resolution of investment disputes ("Standing Mechanism"), an advisory centre on international investment dispute resolution ("Advisory Centre") and procedural rules reform could contribute to a better access to justice for all. The second day, open only to UNCITRAL delegates and observers, consisted of a side-event organized by the UNCITRAL Secretariat and informal roundtable discussions aimed at facilitating the discussions in the Working Group. The discussions were based on presentations by panellists and informal documents prepared for the Meeting. The Meeting's programme, informal documents, presentation slides are available at https://uncitral.un.org/en/content/seventh-inter-sessional-meeting.

4. The Government of Belgium takes the opportunity to express its sincere appreciation to the UNCITRAL Secretariat, the moderators and panellists, and participants for their active engagement in the event. Belgium looks forward to further contributing to the discussions and reforms.

Opening remarks

5. The Meeting was opened by a video message by Ms. Hadja Lahbib (Minister of Foreign Affairs, European Affairs and Foreign Trade and the Federal Cultural Institutions, Belgium), who highlighted that hosting the Meeting during the Belgian Presidency of the Council of the EU underscored the joint commitment of Belgium and the EU to the multilateral ISDS reform efforts in the Working Group.

6. Mr. Bernard Quintin (Director-General a.i. for European Affairs & Coordination, Federal Public Service Foreign Affairs, Belgium) reiterated the history and reasons for the reform and explained the four Belgian priorities in this context, namely: (i) encouraging comprehensive and structural reform encompassing a permanent multilateral investment court ("MIC"); (ii) improving access to justice for all; (iii) promoting alternative forms of dispute resolution, in particular prevention and mediation; and (iv) promoting transparency and inclusivity of the reform process. He also detailed the objectives of the Meeting, in particular encouraging informal discussions on improving access to justice for all, with the ultimate aim of facilitating further work in the Working Group.

7. In a video message, Mr. Valdis Dombrovskis (Executive Vice-President and Trade Commissioner for the EU, European Commission) underscored that the EU has consistently argued that improved openness, effectiveness and accessibility are key to ISDS reform, which are the ideas behind the creation of a MIC. He also expressed EU support for an Advisory Centre in light of improving accessibility and mentioned two recent EU initiatives facilitating the access of small & medium-sized enterprises ("SME's"), namely a web portal with detailed step-by-step information on the process of dispute resolution and specific rules for an expedited procedure agreed bilaterally with Canada in the context of the Comprehensive Economic and Trade Agreement ("CETA").

8. Ms. Maria Martin Prat (Deputy Director General of DG Trade, European Commission) added that ISDS was very expensive, which hinders accessibility for parties, and that the system also provided for insufficient predictability due to the lack of an appeal option and the possibility of review. She stated that the MIC must strengthen coherence and predictability. She concluded by confirming the EU's support for the reform process.

9. Mr. Shane Spelliscy (Chairperson, Working Group III) concluded the opening session by confirming the usefulness of intersessional meetings, where stakeholders could discuss with each other outside the context of formal plenary meetings. He also referred to the crucial work of the OECD and UNCTAD on international investment agreements, which had close linkages with the ISDS reform undertaken by Working Group III. He noted that Working Group III has identified the concerns with regard to ISDS, examined the reforms to address them, and was in the process of developing concrete solutions. Some work streams have already led to results, while the Advisory Centre is planned for adoption this summer.

Panel I: Access to Justice in the context of ISDS

10. Panel I was moderated by Mr. Nicolas Angelet (Professor of International Law, ULB and Ghent University) and consisted of Mr. Vincent Beyer (Associate Expert in Legal Affairs International Investments, UNCTAD), Ms. Catharine Titi (Tenured Research Associate Professor at the French National Centre for Scientific Research and the CERSA, University Paris-Panthéon-Assas), Ms. Amandine Van den Berghe (Senior Lawyer, Value Chains, Trade and Investment, ClientEarth) and Ms. Natalie Morris-Sharma (Director, Singapore Attorney-General's Chambers & Rapporteur, Working Group III). The objective of this panel was to set the scene for the next three panels by defining what justice is and what determines access to it from the perspective of developing countries, SMEs, impacted communities and individuals.

Procedural justice

11. During the first part of the panel, procedural justice and its relation to substantive justice were discussed. The first aspect of procedural justice was timely dispute resolution (justice delayed is justice denied). Efficiency is key in view of the right to be heard within a reasonable time. However, it is not just about setting a time limit, the elements that cause the delay must also be taken into account. Hence the relevance of Working Group III's work on ISDS reform, namely the creation of a Standing Mechanism and the procedural rules reform and the Codes of Conduct, which were adopted by the Commission in 2023.

12. The second aspect of procedural justice that was discussed was legal certainty for investors and States alike and the challenge to balance this certainty with the need for adaptation in the light of changing circumstances. The need for legal certainty does not mean there is a need for uniformity, but rather for a desirable level consistency, bringing predictability and enabling calibration and anticipation. A speaker pointed out the juxtaposition between consistency and adaptability and that this adaptability should be taken into account when seeking legal certainty. This underlines the need for broader rethinking of investment agreements as platforms for continuous engagement between parties and not as one-off deals. Therefore, the UNCITRAL process could be seen as part of a much broader reform agenda.

13. Finally, the third aspect of procedural justice discussed was the host State policy space. The balancing of investors' interests and competing interests, like public health or the environment, are elements of substantive justice, but there are also procedural aspects thereof. A speaker pointed out the nature of ISDS and its far-reaching implications for public policy and general interests, and the impact it has on the energy transition and climate action, especially because of the financial repercussions certain cases have for States (particularly those with limited resources). Another

speaker called for a nuanced approach in searching for a balance between States' regulatory interests and investment protections in ISDS and that the right to regulate and the exceptions to that right should be discussed. The right to regulate might be an issue of substantive law, but arbitral tribunals do not always give effect to it.

Access to justice

14. After discussing what justice is, the panel went on to address what determines access to justice and the quality of it, namely by debating who should have access, and how. The question of "who?" was an important component of the negotiations on the Advisory Centre. One speaker also referred to the denial of benefits and the need for reform to be ambitious, as it might otherwise be largely useless in light of recent jurisprudence. Another speaker pointed out the non-disputing State party perspective in an ISDS case and the fear of disguised treaty amendments, as joint interpretive statements can be seen as interpretive aid or determinative pronouncement. The importance of transparency in ISDS proceedings and the balance struck in the UNCITRAL Rules on Transparency and ICSID Rules were mentioned. Finally, the challenges faced by third parties within the ISDS framework were laid out, as well as the role and limitations for civil society organisations and local communities in submitting amicus curiae.

Improving access to justice

15. After discussing the question of "who", the panel moved on to question how the quality of access can be improved. One speaker made clear that investor-State arbitration should not be confused with justice (access to court does not mean access to justice) and that the Advisory Centre could help improve the quality of access but will not solve it. A procedural reform that can improve the quality is the recourse to local remedies provision, which allows States to correct their own mistake before investors can have access to ISDS. Another speaker pleaded for legal aid schemes for vulnerable investors, of which there are precedents in several international tribunals like the ECtHR and the ICC. Finally, access to justice should be seen as a continuum which is broader than access to court but also includes legal information, advice and assistance.

Q&A

16. During the Q&A, the tensions between different objectives (efficiency, predictability, uniformity, consistency, adaptability, etc.) were mentioned, as well as the fact that investment law is becoming increasingly divergent because investment agreements often contain specific and different provisions, which lead to different interpretations and applications. The option of local remedies as a solution for improving the quality of access was also discussed.

Panel II: Standing Mechanism

17. Panel II was moderated by Ms. Isabelle Van Damme (Partner at Van Bael & Bellis and Visiting Professor at the College of Europe) and consisted of Mr. Michael Imran Kanu (Ambassador and Permanent Representative of Sierra Leone to the United Nations), Mr. Alejandro Buvinic (Head of Division, Services, Investments & Digital Economy, Chile), Ms Alexis Choquet (Deputy Head of International Trade and Investment Unit, France), Ms. Kexian Ng (State Counsel, Attorney-General's Chambers, Singapore). In this panel, participants were invited to reflect on how the proposed Standing Mechanism could contribute to better access to justice for all.

Developing countries

18. The main incentives and challenges for developing countries to become a State party to the agreement establishing the Standing Mechanism were considered. Among the advantages mentioned were consistency of decisions, limitations on double

hatting and other conflict of interest, increased gender, geographical diversity, independent and impartial judges with high qualifications in international law. Building an "ecosystem" to resolve investment disputes and the possibility to ask for advisory opinions, were mentioned as advantages of a Standing Mechanism. A question was asked regarding the costs relating to the Standing Mechanism and who would bear these costs and the possible use of UN resources.

Access of SMEs and civil society

19. The functions of the Standing Mechanism to benefit SMEs and civil society were considered. It was mentioned that the Standing Mechanism could functions as a clear access point for resolving disputes. It was mentioned that obstacles for access for SMEs consisted of high costs, complexity and lengthiness of the procedure as well as uncertainty about the outcome. A Standing Mechanism could form a solution to these obstacles. However, it was mentioned that the definition of SMEs varies across States and that the aim should be to promote SME investments.

20. It was mentioned that a Standing Mechanism could address transparency, openness, independence and accessibility for civil society. Depending on the underlying rules, access by civil society could also be improved in ad hoc arbitration.

Selection of adjudicators

21. The implications of a shift to State control, notably of the nomination and appointment of adjudicators, were considered, including whether this shift could in practice benefit developing countries, SMEs and communities affected by particular investments.

22. Whether there would actually be a move to "State control" and the extent to which States and SMEs are given the choice to participate in the Standing Mechanism were questioned. It was highlighted that notion of "State control" gives the impression that judges will be influenced by States, which was not necessarily the case. Once the judges are appointed based on robust criteria, a reliable system should be in place so that disputes are handled in an independent and impartial manner. It was highlighted that a Standing Mechanism could help achieve the level playing field between States and investors.

23. With regard to access by SMEs to a Standing Mechanism, it was questioned whether this could decrease the budget available for States and reduce access to, for example, developing countries.

24. It was highlighted that the Standing Mechanism would bring more diversity in the selection of adjudicators, which could bring more legitimacy to the system.

Dispute prevention

25. The impact was considered, from a State perspective, of the establishment of a Standing Mechanism, to the policy objectives of investment promotion and prevention of disputes. It was highlighted that capacity building for regulators is an important element in the prevention of disputes and that disputes should be the exception, not the rule. Other possibilities for dispute prevention were highlighted (e.g., the Advisory Centre and better access to legal advice).

Q&A

26. Questions were raised on the costs of a Standing Mechanism compared to costs of other international courts. It was also asked how the successful operation of the Standing Mechanism may impact its accessibility and costs. These elements were suggested for further consideration.

Panel III: Establishment of an Advisory Centre

27. Panel III was moderated by Mr. Joost Pauwelyn (Professor of International Law, Geneva Graduate Institute) and consisted of Ms. Deborah Aba Aikins (First Secretary and Legal Advisor, Permanent Mission to the United Nations and other International Organisations, Ghana), Mr. Kraijakr Thiratayakinant (Counsellor, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, Thailand), Ms. Margie-Lys Jaime (Legal Adviser, Office of Investment Arbitration, Republic of Panama), Ms. Nora Bellec (Legal Officer, Directorate General for Trade, European Commission), Ms. Karin Kizer (Attorney Adviser, Office of the Legal Adviser, Department of State, United States). The panel reflected on how the proposed Advisory Centre could contribute to better access to justice for all.

Justification and goals

28. Participants deliberated on the pressing needs of developing countries and the goal of the Advisory Centre to enhance their capacity in preventing and handling international investment disputes. The panellists discussed whether the Centre's goal is to provide affordable external counsel or to build in-house technical and legal capacity. It was felt that the Centre should aim not only to offer immediate support in disputes but also to contribute to the long-term development of internal capacities within member States. Further, speakers offered additional perspectives, emphasising the importance of legal representation and advice provided by the Centre to enhance credibility and legitimacy within a State when responding to investment claims.

Services

29. The panel discussed the two types of services that the Advisory Centre would offer: (i) technical assistance and capacity-building activities; and (ii) and legal advice/support in specific disputes.

30. The complexity of ISDS was highlighted, with a recognition that ISDS often involved a diverse range of issues spanning various sectors. Unlike WTO cases that may involve a smaller team, ISDS demands a multidisciplinary approach involving not only lawyers but also experts, paralegals, clerks, and witnesses for effective case management.

31. A speaker discussed the challenges faced in ISDS cases, highlighting the importance of involving internal teams and fostering synergy with external counsel. Addressing the high cost of legal representation, particularly for developing and least developed countries, was underscored as a crucial issue to be tackled by the Advisory Centre.

Beneficiaries

32. Participants addressed the beneficiaries of the Advisory Centre's services, focusing on developing countries, SMEs, and impacted communities facing access to justice challenges in ISDS.

33. Participants discussed the aim of the Advisory Centre to target LDCs and developing countries initially but that it may expand in the future. Participants acknowledged the difficulty with providing access to SMEs as the centre's primary goal should remain to be assisting States but highlighted the importance of transparency and the role of governments and the private sector in supporting SMEs. Moral obligations were emphasised in assisting SMEs and affected communities, with references made to existing systems and examples from agreements like CETA.

Staffing, funding and fees

34. The discussion delved into the types of professionals the Advisory Centre should hire, allocation of budget, and fee structures. There was the recognition that the Centre's staffing needs to reflect the multifaceted nature of ISDS and cater to the

diverse expertise required to handle disputes effectively. The discussion acknowledged the need for flexibility in staffing to adapt to the specific requirements of each case.

35. Regarding staffing, it was acknowledged that lawyers would likely constitute the main permanent staff, with an emphasis on hiring experienced professionals capable of managing various aspects of ISDS. The need for expertise in working with experts, national laws, and managing cases was emphasised. Budget considerations were discussed, with reference to an informal note estimating the Centre's annual operating costs at around $5 million, of which $3 million would be devoted to legal assistance.

Methods and location

36. The moderator raised questions about the potential role of technology and alternative methods of providing legal services. One participant emphasised the need for flexibility in adopting new technologies and organisational structures to enhance efficiency and cost-effectiveness while maintaining trust and confidence in the Centre's services. The discussion also touched on the location of the Centre, with considerations for cost-effectiveness and regional divergence. While the idea of regional offices was mentioned, the focus was on assessing the operational implications and potential cost savings before expanding the Centre's presence beyond a single location.

Q&A

37. Openness was expressed to leveraging new technologies to enhance effectiveness and reduce costs. While acknowledging the potential benefits, there was uncertainty about explicitly incorporating technology into the statute, emphasising that it should primarily focus on organisational and managerial aspects.

38. The discussion highlighted the importance of regional offices for accessibility, including with regard to language, proximity to arbitration venues, as well as to the beneficiaries. The need for careful consideration of criteria such as language, accessibility, and regional representation was highlighted.

39. There was a discussion on the role of fees charged by the Advisory Centre and whether it could act as a market disruptor or corrector.

40. The panel concluded with an emphasis on the importance of preserving the two pillars of the Advisory Centre: (1) technical assistance and capacity-building activities; and (ii) legal advice/support in specific disputes. Suggestions were made to start small and gradually expand operations based on funding and demand.

Panel IV: Procedural rules reform

41. Panel IV was moderated by Prof. Eric de Brabandere (Professor of international dispute settlement, Leiden University) and consisted of Mr. Aimé Kasenga Tshibungu (Deputy National Coordinator of the CTR, Ministry of Finance, Democratic Republic of the Congo), Reuben East (Deputy Director Investment Trade Policy Division, Global Affairs, Canada), Soyoung Park (Republic of Korea), Laura Janssen (Senior Policy Officer, Ministry of Foreign Affairs, Kingdom of the Netherlands) and Aurélia Antonietti (Senior Legal Adviser, International Centre for Settlement of Investment Disputes). The panel focused on procedural and cross-cutting issues, and how they could contribute to better access to justice for all.

Expedited procedures for the resolution of investment disputes

42. Expedited procedures for resolving investment disputes were discussed, focusing on the CETA provisions. Three points were highlighted about this procedure, namely that: (i) it had been created for claimants who are natural persons or SMEs, for claims below

40,000,000 SDR; (ii) the system was consent-based, and the respondent was not obliged to consent to using the expedited procedure, and (iii) how this expedited procedure could lead to both time and cost-saving (e.g. single-member tribunal, accelerated timelines, etc.).

Investment promotion and dispute settlement in the Democratic Republic of the Congo

43. An overview of the economic situation of the Democratic Republic of the Congo, as well as its development strategy, was provided. This included an overview of the legal instruments for the promotion of investments in the Democratic Republic of Congo, with a particular focus on the recent ratification of international legal instruments related to investment protection and trade facilitation, as well as internal legal instruments (e.g., Code des investissements, Code minier). The settlement of disputes with foreign investors through alternative dispute settlement was discussed, with a particular focus on the Centre d'arbitrage du Congo (CAC) and the Centre National d'Arbitrage, de Conciliation et de Médiation (CENACOM).

ICSID 2022 Amended Rules and Regulations

44. The new ICSID rules with a view to reducing the duration of the proceedings (see Chapter XII of the ICSID Arbitration Rules on Expedited Arbitration) were presented. It was also explained how, under Rule 52 (Decisions on Costs), an ICSID tribunal shall consider the conduct of the parties during the proceeding, including the extent to which they acted expeditiously and cost-effectively, as a relevant circumstance in a tribunal's decision on costs. ICSID's Rule 14 (Notice of Third-Party Funding), with a particular view to the disclosure requirements, and Rule 53 (Security for Costs), were also referred to. It was said that ICSID's amendments would enhance transparency (see Chapter X Publication, Access to Proceedings and Non-Disputing Party Submissions). Rule 63 (Publication of Orders and Decisions) was mentioned in this regard. It was also stressed that hearings shall be open unless either party objects (Rule 65 Observance of Hearings). Finally, the new rules for submissions by non-disputing parties (Rule 67) and the participation of the non-disputing treaty party (Rule 68) were explained.

Transparency, the Codes of Conduct and access to justice

45. It was recalled how transparency served as a fundamental element to enhance the legitimacy of the ISDS system. Transparency was seen as improving access to justice, for example, by: (i) allowing third parties to participate in dispute settlement proceedings by making *amicus curiae* submissions; (ii) publication of awards, allowing investors and the public to learn about relevant situations; and (iii) ensuring that there are clear rules on confidentiality, without which access to justice can also be jeopardized. It was also stated that the disclosure requirements in the Code of Conduct can help enhance access to justice and the system's legitimacy.

Draft provisions on procedural and cross-cutting issues

46. Several of the draft provisions on procedural and cross-cutting issues (see A/CN.9/WG.III/WP. 231) were discussed, with a view to understand how some provisions could increase the efficiency of ISDS proceedings. Draft provision 23 on assessment of damages and compensation was discussed regarding mitigating controversies concerning damages discussions and the curbing of excessive claims. In this regard, ensuring that the draft provision would align with the customary international law principles of full reparation for internationally wrongful acts was mentioned. The importance of allocation of costs, addressed in draft provision 25, was also noted. It was stated that the introduction of the principle that "costs follow the event" could help increase procedural efficiency. The importance of clear guidelines for cost allocation was stressed, as well as tribunals' ability to discourage abuse of proceedings by allocation of costs. Finally, draft provision 14 on bifurcation was discussed. It was said that bifurcation can serve as a helpful tool to increase the efficiency of proceedings. At the same time, it was stated that there are many practical

complexities involved and that it is essential to have precise criteria on bifurcation to uphold consistency and predictability in decision-making.

Q&A

47. One question related to the limited number of signatures and ratifications of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (the "Mauritius Convention on Transparency"), which had been signed by twenty-three and ratified by nine States. It was explained that the current numbers should not be seen as a lack of interest in transparency, as this could also be achieved by relevant language in investment agreements. Another comment raised the possible danger of only focusing on transparency in treaty-based ISDS. It was pointed out that contract-based ISDS also needed adequate transparency guarantees.

Side-event: Possible models of a multilateral instrument on ISDS reform

48. The side-event was moderated by Mr. Jae Sung Lee (Senior Legal Officer, Secretary, Working Group III) and consisted of Ms. Judith Knieper (Secretary of Working Group II, Legal Officer, UNCITRAL Secretariat); Ms. Jessica Di Maria (Advisor, Tax Treaty Unit, OECD); and Ms. Tomoko Ishikawa (Professor, Nagoya University, Graduate School of International Development, Japan).

Mauritius Convention on Transparency

49. It was explained that the 2014 United Nations Convention on Transparency in Investor-State Arbitration (the "Mauritius Convention") sought to apply the UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration (the "UNCITRAL Rules on Transparency") to 3,000 existing investment treaties. It was also mentioned that UNCITRAL established a Transparency Registry as repository for the publication of information and documents, which is sponsored by the European Union and Germany. For investment treaties concluded before April 1, 2014, the UNCITRAL Rules on Transparency apply if the disputing parties agree, or if the treaty parties agreed after April 1, 2014, for example, by ratifying the Mauritius Convention. For investment treaties concluded on or after April 1, 2024, the UNCITRAL Rules on Transparency apply if the UNCITRAL Arbitration Rules are applicable and the treaty parties have not agreed otherwise. Some reservations can be made by Parties to the Mauritius Convention. So far, the Mauritius Convention was signed by 23 States and ratified by 9 States.

OECD BEPS MLI Convention

50. It was explained that the Organisation for Economic Co-operation and Development ("OECD") has adopted in 2016 a Multilateral Convention to Implement Tax Treaty Related Measures to prevent Base Erosion and Profit Sharing (the "BEPS MLI Convention"), which covers 102 jurisdictions and has been ratified in 85 jurisdictions, to modify 1,900 bilateral tax treaties. The BEPS MLI Convention was developed to implement rapidly the 20 reform measures that had been taken after the OECD had adopted in 1963 a Model Tax Convention and after this had led to the development of the current network of over 3,500 bilateral treaties in order to share taxing rights between two States. It was set out that the BEPS MLI Convention is a flexible instrument allowing States to pick and choose which reform they wish to be implemented. Each signatory to the BEPS MLI Convention can make notifications or reservations to translate policy choices without the requirement of bilateral discussions or negotiations. A State joining the BEPS MLI Convention is not obliged to change its entire network on tax treaties. It was said that one has to look at the notifications made by States having joined the instrument and look for matches. Pursuant to Article 28 of the Convention, States can also block the application of measures. The BEPS MLI Convention has no protocols and no financial provisions. A conference of the Parties can be convened in order to discuss the interpretation or implementation of certain questions. The OECD has developed an online database where the impact of the BEPS MLI Convention on

each treaty can be checked. The Parties are developing synthesised texts of their tax treaties. There are no observers foreseen in the conferences of the Parties on the BEPS MLI, but it is possible to admit non-signatory Parties to attend.

UN Framework Convention on Climate Change

51. It was explained that the 1992 United Nations Framework Convention on Climate Change (the "UNFCCC"), having as aim to reduce greenhouse gas concentrations in the atmosphere, has a structure which lies between a framework convention and a substantive convention. It contains specific commitments and also special commitments, but it has flexibility. It was set out that the Conference of the Parties (COP) to the UNFCCC has an open-ended mandate to conduct a regular review of the implementation of the UNFCC. Article 16 of the UNFCCC provides a flexible procedure for amendments to the Convention. Protocols can be concluded together with the Convention or at a later stage. Constant adjustments are possible. Pursuant to Article 17 of the UNFCCC, only Parties to the Convention may be Parties to a Protocol. Article 11 of the UNFCCC provides for a financial mechanism with a global financial facility for green funds. It was said that a framework approach gains only in as much as the Parties are willing to advance the regime Observers can be allowed to attend the COP sessions.

Roundtable discussions

52. The roundtable discussions were moderated by Shane Spelliscy and Natalie Morris-Sharma.

Advisory Centre

53. The roundtable discussion on the Advisory Centre was based on A/CN.9/WG.III/WP.238. On whether the Advisory Centre should be an organisation with linkage to the United Nations, it was suggested that the Advisory Centre should be financed entirely by extra-budgetary resources but established as a UN-body which has certain advantages, for example, with regard to privileges and immunity. Possible models, such as the Technology Bank for the Least Developed Countries and the UNCITRAL Regional Centre for Asia and the Pacific were mentioned as examples. It was questioned whether the Advisory Centre could charge market rates for its services, if established as a UN-body. It was suggested that the relationship between UNCITRAL and the Advisory Centre should be further considered.

54. It was also suggested that the Governing Committee of the Advisory Centre should be able to amend the statute of the Advisory Centre. It was explained that there could be different categories of amendments, some requiring the consent of all State Parties, whilst there may be more flexibility in regard to amendments to the annexes. It was mentioned that there were a number of issues pertaining to operationalization.

55. With respect to the budget of the Advisory Centre, the question was raised whether the 80% of budget for the five years should be a condition for its establishment. A comment was made that an initial contribution would probably be lower and that an annual contribution would ensure sustainability of the budget.

Dispute prevention and mitigation

56. Part 2 of the roundtable focused on draft guidelines on prevention and mitigation of international investment disputes based on a revised draft of document A/CN.9/WG.III/WP.235.

57. Discussions evolved on whether to present the guidelines for adoption by the Commission and questions were raised with regard to the reference to the WTO Investment Facilitation for Development (IDF) Agreement or the World Bank's Systemic Investment Response Mechanisms (SIRM) in the draft guidelines.

58. Discussions also touched upon the final form of the document to be presented to the Commission.

59. Further comments on the revised guidelines were requested to be submitted by 15 March 2024, so that they can be reflected in an updated document for the 48th session of the Working Group in April in New York.

Procedural rules reform

60. Part 3 of the roundtable dealt with draft provisions on procedural and cross-cutting issues based on document A/CN.9/WG.III/WP.231.

61. It was explained that at the 47th session of the Working Group in January 2024 the Secretariat had been asked to classify the draft provisions largely into three categories: (i) those that aimed to achieve harmonisation with existing procedural rules (including the 2022 ICSID Arbitration Rules) and could form a supplement to the UNCITRAL Arbitration Rules; (ii) those that would build on existing procedural rules and provisions found in recent investment treaties, which could be drafted as treaty provisions for adoption by States; and (iii) those that were not found in procedural rules addressing the so-called cross-cutting issues.

62. With respect to the first category, which could include draft provisions 13, 14, 16, 19, 20, 22, 24 and 25, the question was put forward whether the ICSID Amended Rules should form the basis, including whether explicit references should be made to the ICSID Rules. The possibility of developing an appendix or supplement to the UNCITRAL Arbitration Rules like the Transparency Rules and the Expedited Rules was mentioned. The question was also raised whether these procedural rules would only apply to arbitrations or also to the standing mechanism.

63. With respect to the second category, which could include draft provisions 11, 15, 17, 18 and 21, the question was put forward as to how these provisions would interact with existing investment treaties and how these provisions should be incorporated (in the MIIR or as provisions which States agree to apply or as individual provisions), whether they should apply to ICSID proceedings and whether there is a concern about fragmentation.

64. With respect to the third category, which would include draft provisions 7, 8, 9, 10, 12 and 23, the question was put forward as to whether these provisions could be stand-alone rules or a set of rules to supplement the UNCITRAL Arbitration Rules or rules to supplement existing treaty provisions.

65. Different views were shared. A suggestion was made to include the provisions of categories i) and ii) in a supplement to the UNCITRAL Arbitration Rules, and to include the provisions of category iii) in a protocol to the MIIR so that they could be applied to all ISDS proceedings. Another suggestion was made to suspend the discussion on the provisions of category iii) and prioritize provisions of categories i) and ii). A comment was made that model clauses should not be the final form. Another comment was that it might not be desirable to have a separate set of arbitration rules for investor-State arbitrations. Concerns about fragmentation were expressed.

Closing remarks

66. In closing, Ms. Anna Joubin-Bret (Secretary, UNCITRAL) thanked the Government of Belgium for hosting the Meeting, as well as the co-organisers. Mr. Christophe Payot (Director EU Trade Policy & WTO unit, Belgian Ministry of Foreign Affairs) thanked the moderators, speakers and all participants for their contribution to this Meeting.