



STATEMENT OF THE GROUP OF G77 AND CHINA DELIVERED BY MS. VERONICA GOMEZ, CHARGE D'AFFAIRES A.I. OF THE PERMANENT MISSION OF ECUADOR AT THE UNCITRAL WG III (INVESTOR-STATE DISPUTE SETTLEMENT REFORM), 29 OCTOBER - 2 NOVEMBER 2018

Vienna, 29 October 2018

Mr. Chairman,

I have the honor to speak on behalf of the Group of 77 and China.

1. The Group of 77 and China attaches great importance to the improvement of the global investment environment in a way that encourages fairness and promotes investment policies that are in line with the three pillars of sustainable development.
2. The Group believes that private international capital flows, particularly foreign direct investment, along with a stable international financial system, are vital complements to national development efforts, and that foreign direct investment can help create skill-intensive and better-paid jobs, promote the transfer of knowledge, raise productivity and add value to exports.
3. The Group of 77 emphasizes the necessity of designing and implementing appropriate investment policies, including transparent and fair investments dispute settlement regimes, to maximize the potential of cross border investments.
4. A discussion on the concerns relating to the existing ISDS system and possible reforms are of central importance to the developing states that adopt such regime, given the impact of ISDS on the development process. Many of the group's members are already actively taking part in this process through, inter alia, refining the existing ISDS system, revising or in some cases terminating existing bilateral treaties, developing new models for future agreements, and engaging in multilateral processes.
5. The Group underlines that any dispute settlement regime should appropriately address the rights and responsibilities of foreign investors.
6. The Group of 77 and China believes that the right to regulate and the flexibility of states to protect legitimate public welfare objectives should be respected. The challenges that states have faced, and the advantages and disadvantages of different options should be thoroughly discussed and, on that basis, propose the elements for the implementation of a possible solutions.
7. The Group stresses the importance of the universality of this issue and the necessity of maintaining its multilateral spirit. In this context, it is recalled that the discussions pertaining to reforming ISDS are centralized at UNCITRAL but have been enriched by inputs from other institutions and may benefit from reform processes such as the one launched in the International Center for Settlement of Investment Disputes (ICSID). Therefore, a consensus building process under UNCITRAL is essential.
8. The previous meetings of the Working Group III have been important steps towards laying out concerns regarding ISDS and pointing to some of the challenges that States face as a result of how the system currently operates, including, inter alia, concerns pertaining to the duration - including chances of re-litigation - costs of arbitration, cost allocation and arbitral awards, third-party funding, arbitrators' independence and expertise, powers exercised by tribunals, transparency, counterclaims, concurrent proceedings and multiplicity of cases, measures to address frivolous and non-meritorious claims, as well as the absence of any mechanism that guarantees the consistency, coherency and predictability of the awards.

9. The Group highlights the need for certainty and predictability. In this regard, we look forward to moving on to phase II of the mandate that will consider whether to address concerns about the inconsistency of the arbitral awards or judgments, the limitation of existing mechanisms as well as the lack of uniformity or the lack of correction of the resolutions outcomes.

10. Finally, the Group of 77 and China reiterates that the effectiveness and legitimacy of this process rest on the active and wide participation of both developing and developed states to present their experiences and visions on the direction and content of any possible reform.

I thank you, Mr. Chairman.