



BOLIVARIAN REPUBLIC OF VENEZUELA
Permanent Mission of the to the United Nations

Side Event

Investor-State Arbitration: Lessons Learned

The law on promotion and protection of foreign investment has gone through major changes during recent decades. Thirty years ago, as UNCTAD reports indicate, only about 200 investment treaties for promotion and protection of foreign investment existed. Today, however, that number is approximately 3.500, including bilateral investment treaties (BITs) and investment chapters of free trade agreements. In the 1990s alone, States around the world entered into about 1.500 new investment treaties. Despite the promise of attracting much needed foreign investment for development, the ramifications have been severe for many States because foreign investors have used these treaties to bring or threaten enormous claims against host States that States entering into these treaties never anticipated or thought possible.

The mechanism for bringing such claims is the dispute resolution clause of the treaties, which grants foreign investors a direct right to commence international arbitration against host States before the World Bank's International Centre for Settlement of

Investment Disputes (ICSID), as well as other institutions or ad hoc tribunals functioning under the rules of the United Nations Commission on International Trade Law (UNCITRAL). This system of international arbitration has become the predominant form of international investment dispute resolution.

A consequence of using this system of investor-State dispute settlement has been the development of a body of international law with few checks and balances and little transparency or consistency. These shortcomings have been a source of serious concern for many States around the world, both developed and developing. The problem is exacerbated by the new trend in mega cases that have resulted in multi-billion dollar awards against States that would have been unimaginable only a few years ago and could bankrupt small states.

These concerns have led various States to review and rethink the wisdom of entering into investment treaties, to denunciate treaties, and to develop proposals for an entirely new system of investor-State dispute resolution, such as the recent proposal by the European Commission to create an Investment Court System to replace the existing dispute settlement mechanism in all ongoing and future EU investment negotiations, including the Transatlantic Trade and Investment Partnership (TTIP).

The system of investor State dispute settlement strikes at the core of national sovereignty, trade and development, as well as the development of international law, and is a critical subject for discussion and exchange of ideas among the member States of the UN.

This side event is designed to provide an overview of the current state of the system and an opportunity for exchange of ideas and experiences of all Member States to bring awareness through open debate.