

Statement by Pakistan on Agenda Item 80
“The Report of the United Nations Commission on International Trade Law (UNCITRAL) on the work of its fifty-fourth session”

(18 October 2021)

Mr. Chair,

We take note of the Commission’s report on its 54th Session. We would like to thank the Chair of the Commission and its Secretariat for their valuable efforts in preparing the report as well as their professional and efficient work in facilitating the UNCITRAL Sessions.

2. The Commission was established to promote progressive harmonization and unification of international trade law. It has an important role in promoting the rule of law at both in international and national levels. Its legislative work is critical to the achievement of the SDGs through establishing and facilitating fair, stable and predictable legal frameworks for inclusive, sustainable and equitable development.

3. To this end, we appreciate the progress made in its different working groups during the 54th Session. We take note of the adoption of six legislative texts including: the UNCITRAL Legislative Guide on Limited Liability Enterprises, the UNCITRAL Mediation Rules, the UNCITRAL Expedited Arbitration Rules and the new article 1, paragraph 5 of the UNCITRAL Arbitration Rules, as well as the Legislative Recommendations on Insolvency of Micro and Small Enterprises.

4. Pakistan was also pleased to co-sponsor Japan’s initiative for enlargement of the membership of the Commission during the last session of the Commission. We believe that the proposed expansion takes into account interests of various groups and represents a compromise solution.

Mr. Chair,

5. With respect to **Working Group I**, Pakistan recognizes the importance of reducing legal obstacles faced by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle, particularly in developing economies. We are mindful that MSMEs have limited bargaining power and experience several obstacles, many of which are exacerbated by operating in the informal economy, thus missing the growth opportunities offered by the domestic and international markets.

6. We are pleased with the progress made by the Working Group I. We hope that the UNCITRAL Legislative Guide on Limited Liability Enterprises and the simplified legal form for MSMEs would encourage their migration to the formal sector, which increases business registration of previously unregistered enterprises, thus promoting greater compliance with legal requirements.

7. As for **Working Group II**, Pakistan takes note of the entry into force of the Singapore Convention on Mediation. With respect to the Working Group's deliberations relating to expedited arbitral proceedings, we believe that it is critical to balance the efficiency of the arbitral proceedings and the rights of the disputing parties to due process and fair treatment.

Mr. Chair,

8. Pakistan continues to be engaged in **Working Group III's** consideration of the reform of Investor-State dispute settlement (ISDS). We would like to recall that in 2017, the UNCITRAL Commission gave its Working Group III "*a broad mandate to work on the possible reform of investor-state dispute settlement*". It was also agreed by consensus that the system of ISDS raises myriad concerns and merits reform.

9. Besides structural and non-structural reforms, states also agreed by consensus that UNCITRAL's work must address other reform options, including alternatives to ISDS, to resolve investor-state disputes, exhaustion of local remedies, and counterclaims and issues including damages, impacts on non-parties, and regulatory chill. The concerns underlying these so called "**cross-cutting issues**" are widespread and profound.

10. The Working Group-III is now moving towards its delivery phase. It is our understanding that the revised workplan prepared by the Secretariat and the Bureau is only a "notional" guide for the Working Group to advance its work, and that the focus should be on a request to the Commission for additional resources and the rationale for this. We believe that the document should continue to evolve in view of the specific concerns expressed by member states during the last Session. In this regard, we would like to highlight the following points:

- **First**, the consideration of cross-cutting issues (currently placed under the category of reform of procedural rules for investor-State dispute settlement) would require more conference time and would need to be placed preferably as a **separate work stream**. The issue of damages, in particular, has so far, not been accorded the central place in the reform process that it deserves. This approach is curious. The size of damages awarded in recent years against States has been at the forefront of critiques

of investment arbitration and involves many procedural dimensions. This is the primary focus of the ISDS reform process. The result is a system that critics allege favors investor claimants and places considerable burdens on developing states. For the sake of the legitimacy of the global ISDS system, we believe that any meaningful reform must strike a balance between rights and obligations of the States on the one hand and of the investors on the other.

- **Second**, the notional work plan should fully take account of the limited resources available to developing States, as well as technical difficulties that they face, which restrict their effective participation in informal sessions.

- **Third**, we believe that the adoption of possible reform elements on the so called “rolling basis” might not allow issues of particular interest to developing countries to be considered early by the Working Group and could prevent a more holistic and balanced approach to investor-State dispute settlement reform.

11. In conclusion, **Mr. Chair**, developments over the past four years, since UNCITRAL launched its ISDS reform project strengthen the case for serious and broad action. In this regard, the deficiencies in the workplan need to be addressed in the subsequent sessions of the Commission on a priority.

I thank you
