MEETING REPORT

Subject: African Round Table on the Reform of Investment Protection, Thursday 22 November 2018, Egmont Palace, Brussels

On 22 November 2018, the Belgian Ministry of Foreign Affairs organised a round table with African countries in the margins of a broader High Level Event on Investment Protection. H.E. Didier Reynders (Deputy Prime Minister and Minister of Foreign Affairs) introduced the African delegations present at the meeting, the EU project to establish a Multilateral Investment Court, as well as the Dutch initiative to create an advisory centre on international investment law.

In his introductory statements, H.E. Didier Reynders gave a presentation addressing (i) the concerns in the existing investor-State dispute settlement (ISDS) system; (ii) the main features of the Multilateral Investment Court; (iii) how the Multilateral Investment Court responds to the concerns of the ISDS system; and (iv) the ongoing multilateral discussions at the United Nations Commission on International Trade Law (UNCITRAL). The Commission distributed copies of the PowerPoint presentation and of a factsheet on the Multilateral Investment Court and UNCITRAL process – see the two documents in annex.

All African States intervening in the debate emphasised the recent (concluded or ongoing) reform processes of their investment legislations to create a more favourable climate for foreign investors.

On the Multilateral Investment Court and ongoing UNCITRAL process:

- explained that ISDS is an important tool to attract foreign investment, but that there is also the need to create a more balanced and fair system of ISDS, which is not perceived as a system governed by developed countries. A Multilateral Investment Court would need to address both those needs.
- argued that some of the proposals of the EU accommodate their interests, without specifying which ones.
- stressed the need to reform the existing ISDS system, arguing that in particular the lack of appeal and transparency has a strong impact on the credibility of the system. In addition, they mentioned that the model BIT of Brazil should be followed as it includes rules on the protection of human rights, the
environment and anti-corruption. They want to protect themselves from potential future disputes and see the Multilateral Investment Court as a solution to the problems of the ISDS system in the XXI century.

- Supports a broader investment reform encompassing both substantive and procedural rules. They firmly believe that an inclusive public Court is better than arbitration, however this reform would be insufficient. Therefore, engages in UNCITRAL, but does not agree fully with the narrow scope of the mandate of Working Group III working on ISDS reform. In particular, UNCITRAL discussions should also deal with the relations between investors and communities affected by human rights violations.

- Emphasised how the UNCITRAL discussions are a unique opportunity for African countries to include their concerns and interests in the reform process. They are currently analysing the EU ideas to establish a Multilateral Investment Court. They also think that a reform of the substantive investment rules is important.

The Secretary of UNCITRAL (Anna Joubin-Bret) presented a number of features of the ongoing UNCITRAL discussions:

- The mandate of UNCITRAL Working Group III encompasses not only real concerns, but also those issues that are perceived as problematic by civil society.
- The second phase of the mandate that was just concluded showed a strong support in favour of reform of the ISDS system.
- UNCITRAL maintains a travel fund (to which the EU and other donors are contributing) for granting travel assistance to developing countries to Working Group III sessions.
- UNCITRAL is organising intersessional meetings aimed to raise awareness on the important issues related to ISDS reform. One meeting was held in September 2018 in Korea and another one is planned in February 2019 in the Dominican Republic. The African continent is a key region where an intersessional meeting should be organised in the short to mid-term.

- The Netherlands Ministry of Foreign Affairs presented the background and latest developments of the Dutch project to establish a mechanism to assist those parties that cannot adequately defend themselves in ISDS proceedings (an advisory centre for international investment law). The aim of the mechanism would be to assist those parties in legal representation, capacity building and in negotiations. Possible beneficiaries include developing countries and least developed countries, but also SMEs. The Government is planning to launch a feasibility study through a tender procedure by the summer of 2019.

Lastly, the law firm Van Bael & Bellis sponsored their pro-bono project launched in 2018 to assist developing countries in negotiating ISDS rules,
including at UNCITRAL [out of scope] [Art. 4.1(a)]

Encl.: 1. Power point presentation “The Multilateral Investment Court Initiative”.

2. UNCITRAL Multilateral Investment Court Factsheet.

C.c.: [Art. 4.1(b)]