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ISDS Reform – A World Investment Court

Is it a Possible Gateway to World Investment Organization?

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ABSTRACT

The international investment law regime governed by numerous multilateral and bilateral agreements is fragmented; the single connecting thread is the Investor-state Dispute Settlement (ISDS) mechanism which resolves disputes between Investors and State. While the current mechanism has served the investment regime adequately the growing investments and subsequent disputes have brought to light criticism which is boiling into an ISDS crisis. The paper studies these criticisms which range from allegations on functioning of tribunals, breach of sovereignty to imbalance of power between disputing parties. Combating these criticisms some States have opted for an alternate dispute resolution mechanism by establishing Bilateral Investment Courts (BIC), frontrunner being European Union (EU) which has embedded BIC in Transatlantic Trade and Investment Partnership (TTIP), Canada-EU Comprehensive Trade and Economic Agreement (CETA) and the EU-Vietnam BIT, 2015. The paper reviews the provision of these agreements as blue prints for establishment of World Investment Court (WIC), the efforts for which has been undertaken by UNCITRAL Working Group III under the de facto leadership of EU. The paper further analyses whether establishment of a WIC would eventually lead to establishment of a World Investment Organization, unifying the international investment regime under an umbrella institution.

Keywords: *Investor-state Dispute Systems (ISDS); World Investment Court (WIC); World Investment Organization (WIO)*

I. INTRODUCTION

Foreign investment has come to be recognized as a necessary evil, necessary as it is vital for global economic development[2] and evil because developing nations are willing to sacrifice their sovereignty to attract investments.[3] The current international investment regime is governed by bilateral investment treaties (BITs), and the 1965 Convention on Settlement of Investment

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[2] Susan D. Franck, *The Legitimacy Crisis In Investment Treaty Arbitration: Privatizing Public International Law Through Inconsistent Decision*, 73 FORDHAM LR 1521, 1524 (2005).

[3] Nicolette Butler & Surya Subedi, *The Future Of International Investment Regulation: Towards A World Investment Organisation?* 64 NETH INT LR 43, 59 (2017).

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Disputes (Convention), which establishes International Centre for Settlement of Investment Disputes (ICSID) to facilitate dispute settlement between States and nationals of other States.[4] Currently there are 2343 BITs[5] in force and as of 2020 ICSID registered 58 new cases,[6] highest number since its inception. However, despite the positive numbers the current regime has come under criticism since the beginning of the 21st century, these criticisms have given rise to legitimacy crisis and an urgent need for reshaping the Investor State Dispute Settlement (ISDS) regime. This paper aims to identify the alleged shortcomings of ICSID and analyze the possible solution adopted by European Union (EU) Bilateral Investment Courts (BIC) which is a blue print for the World Investment Court (WIC) in making.

Part *two* of this paper shall discuss four criticisms faced by ICSID. Part *three* identifies the possible solution of WIC and investigates current bilateral attempts to establish an investment court in the Transatlantic Trade and Investment Partnership (TTIP), Canada-EU Comprehensive Trade and Economic Agreement (CETA) and the EU-Vietnam BIT, 2015. It briefly discuss' the criticism to WIC and states the current attempt of United Nations Commission on International Trade Law's (UNCITRAL) Working Group III on ISDS reform in Part *four*. Part *five* concludes with answering why WIC can eventually lead to establishment of the World Investment Organization (WIO).

II. CRITICISMS TOWARDS ICSID

International investment law before ICSID was fragmented, and investors seeking protection of their investments found it deficit, thus came into existence ICSID to protect investors who could now pursue claims against a sovereign host States.[7] ICSID was established on needs of the investors, and thus continues to face criticisms from being investor bias to that of 'regulatory chill'. These criticisms overlap creating a web of shortcomings which in isolation may seem harmless but, together establish a weak foundation for the future of global economy hoisted by foreign investment.

The following are the criticisms of the ICSID Mechanism;

(A) Tribunal Impartiality and Transparency

ISDS is distinct from commercial arbitration which deals with public law regulations of

[4] M. SORNARAJAH, THE INTERNATIONAL LAW OF FOREIGN INVESTMENT 50 (3rd ed., Cambridge University Press 2010).
[5] *International Investment Agreements Navigator | UNCTAD Investment Policy Hub* INVESTMENT POLICY UNCTAD, https://investmentpolicy.unctad.org/international-investment-agreements (Mar. 30, 2021).
[6] *The ICSID Caseload — Statistics Issue 2021-1*, ICSID 7 https://icsid.worldbank.org/sites/default/files/publications/The%20ICSID%20Caseload%20Statistics%20%282021-1%20Edition%29%20ENG.pdf (Mar. 30, 2021).
[7] 19 JESWALD W. SALACUSE, Arbitrating Foreign Investment Disputes 53-54 (Norbert Horn, 2004).

investment disputes between 'State and private individuals', while the latter calls for confidentiality between 'private' disputing parties.[8] Transparency becomes important in ISDS due to state accountability to its citizens, who are entitled to know the legality of the State's action,[9] while the public is updated with the arbitral awards published on ICSDI website, the proceedings remain secretive and only come to the public knowledge when challenged in domestic courts.[10] This violates the basic objective of the foreign investment that is economic development of a country and its people. Theoretical existence of transparency must be accompanied by demonstration of the same by keeping the public abreast of the developments in investments.[11]

Tribunal impartiality is the absence of pre-conceived notion, while independence is lack of improper connections, both characters are essential to arbitration, but moreover to ISDS where the award has consequence on State interests.[12] Unfortunately the ICSID Tribunals are not known for either, although there have not been particular cases of arbitrator impartiality; developing nations believe that tribunals are biased towards investors and favour 'neo-liberal economic policies.'[13] This belief stems from the basic structure of ISCID, which gives a locus standi exclusively to investors, whereby arbitrator are incentivized to decide in favour of the investor who has the power to re-nomination the arbitrator in anticipation of favorable result.[14] This allegation is not without substance, it must be realized that investors are huge corporations, who would not bring forth suit without due consideration and significant chance of prevailing.[15] Although this argument might seem myopic,[16] it cannot be denied that the mere appearance of impartiality invites criticism of ICSID.

(B) Inconsistent Interpretation

Considering the fact that foreign investments are regulated by different BIT's and MIT and disputes adjudicated by different tribunals, expecting consistency would be contrary to the

[8] David M. Howard, *Creating Consistency Through A World Investment Court*, 41 FORDHAM INT'L L.J. 1, 4 (2017).
[9] *Id*, citing GUS VAN HARTEN, INVESTMENT TREATY ARBITRATION AND PUBLIC LAW (Oxford Scholarship Online 2009).
[10] Howard supra note 7, at 23.
[11] Jack Coe, *Transparency In The Resolution Of Investor-State Disputes - Adoption, Adaption, And NAFTA Leadership*, 54 KANSAS LAW REV 1339, 1339 (2006).
[12] Howard supra note 7, at 24.
[13] Suzanne A. Spears, *The Quest For Policy Space In A New Generation Of International Investment Agreements*, 13 J. INT. ECON. LAW 1037, 1040-41 (2010).
[14] Anthea Roberts, *Power And Persuasion In Investment Treaty Interpretation: The Dual Role Of States*, 104 AM. J INT'L L. 179, 197 (2010).
[15] Howard supra note 8, at 24.
[16] Charles N. Brower & Stephan W. Schill, *Is Arbitration A Threat Or A Boon To The Legitimacy Of International Investment Law?*, 9 CHI. J. INT'L L 471, 491 (2009).

purpose of the current system which enables great party autonomy in instrument drafting and adjudication, however this makes foreign investment a risky and unpredictable.[17] The broad standards set by the IIA result in tribunals have wide range interpretative discretions[18] this interpretative freewill also gives rise to questions of legitimacy. There are certain situations where investors and States might expect predictability, but owing to the current regime fail to attain it, these situations are as follows;[19]

- *Disputes with same facts, parties, and similar investment rights*: In Lauder arbitration,[20] two tribunals adjudicating upon similar expropriation standards in different BIT's simultaneously came to different conclusions. In the Argentina-US arbitrations, Argentina was sued by 5 American companies for exceptional government actions taken to stabilize the economy. Three tribunals[21] held Argentina did not satisfy emergency defense in Argentina-US BIT, while two tribunals[22] held Argentina had satisfied the required emergency defense.

- *Disputes with similar situations and investment rights*: 'Fair and equitable treatment' in NAFTA was interpreted differently in each of the following cases, tribunals in *Metalclad*[23] *and S.D. Myers*[24] interpreted the provision as existing independent of minimum standards of CIL. Tribunal in *Methanex*[25] held that the provision did not incorporate protection beyond CIL. Further *Genin v. Estonia* interpreted the provision of 'fair and equitable treatment' in NAFTA as "wilful neglect of duty below international standards or being subject to bad faith."[26]

- *Explicit disagreements between previous tribunals*: Tribunal in *SGS Philippines*[27] not only diverged from *SG Pakistan's*[28] narrow interpretation of umbrella clause while establishing jurisdiction, it also failed to distinguish the two cases.

On the issue of inconsistent interpretation Rudolf Dolzer agrees that "*the current system of*

[17] Jens Dammann & Henry Hansmann, *Globalizing Commercial Litigation*, 94 Cornell L.Rev. 1, 35 (2008).
[18] Roberts supra note 13, at 181.
[19] Franck supra note 1, at 1545-46.
[20] Ronald S. Lauder v. Czech Republic, UNCITRAL Arbitration, Final Award (Sept. 3, 2001) and CME v. Czech Republic, UNCITRAL Arbitration, Partial Award (Sept. 13, 2001)
[21] Sempra Energy Int'l v. Argentine Republic, ICSID Case No. ARB/02/16, Award (Sept. 28, 2007)¶ 388; Enron Corp. v. Argentine Republic, ICSID Case No. ARB/01/3, Award (May 22, 2007) ¶313, 321, 339; CMS Gas Transmission Co. v. Argentine Republic, ICSID Case No. ARB/01/8, Award (May 12, 2005) ¶ 331.
[22] CCS Award supra note 19 at ¶219-22, 266 and LG&E Energy Corp. v. Argentine Republic, ICSID Case No. ARB/02/1, Decision on Liability (Oct. 3, 2006) ¶257-63.
[23] Metalclad Corp. v. Mexico, ICSID Case No. AR.B(A-F)/97/1, Award (Aug. 30, 2000), ¶103.
[24] Compare Tecnicas Medioambientales Tecmed S.A. v. United Mexican States, ICSID Case No. ARB(AF)/00/2, T 154 (May 29, 2003) ¶ 263.
[25] Methanex v. United States, IT 16, 25-26, UNCITRAL, Award (Aug. 3, 2005).
[26] Howard supra note 8, at 31.
[27] SGS v. Philippines, ICSID Case No. ARB/02/6, Decision on Jurisdiction, Decision on Jurisdiction, (Jan. 29, 2004).
[28] SGS v. Pakistan, ICSID Case No. ARB/01/13, Decision on Jurisdiction, (Aug. 6, 2003).

investment arbitration has not been designed in order to promote uniformity or consistency of either rule-making or interpretation…"[29] However it cannot be denied that standard interpretation of rights will promote justice, legitimacy[30] and predictability, encouraging states and investors. Further this inconsistency is driven by absence of appellate mechanism which can lead to cohesion and consistency of principles,[31] and also lead to evolution and development of investment jurisprudence.[32]

(C) Legitimacy and Sovereignty

The current ISDS regime originates from customary international law[33] which has the bearings of colonial past, and was formulated with the intent that the developing countries were willing to give up their sovereignty to attract growth, while developed nations have the sole objective of investor protection.[34] This system poses a threat to sovereignty.[35] The current ISDS was not formulated "*to address complex issues of public policy that now routinely come into play in investor-state disputes"*[36] and States do not have right over their policy matters. In early 2000 when Argentina was facing catastrophic financial crisis it implemented reforms to restore the national finances[37] however, these affected the investments of foreign investors who approached ICSID and subsequently this further burdened Argentina with $80 billion liability and another $8 billion in costs.[38] ISDS is viewed as a "sword used by investors to attack the legitimate rules and regulations of public interest."[39] The indicators of legitimacy are certainty, accountability, and impartiality[40], and in the points discussed above we see that the current ISDS lacks all three, therefore facing legitimacy crisis.

(D) Balance of Power - Investor and State

In 2000, ICA Executive Director warned that "ICSID Convention is not fair"[41] and recommended India not be a signatory, on the ground that ICSID arbitration rules leaned in

[29] Rudolf Dolzer, *Fair And Equitable Treatment: Today's Contours*, 12 SANTA CLARA J. INT'L L. 1, 15 (2013).
[30] Franck supra note 1, at 1598.
[31] Butler & Subedi supra note 3, at 43.
[32] Frank J. Garcia et al., *Reforming The International Investment Regime: Lessons From International Trade Law*, 18 J. INT'L ECON. L. 861, 873 (2015).
[33] Howard supra note 8, at 9-10.
[34] Jeswald W Salacuse, *The Emerging Global Regime For Investment*, 51 HARV. INT'L L.J 427, 442 (2010).
[35] *Id*. at 434
[36] Butler & Subedi supra note 3, at 58.
[37] William W. Burke-White, *The Argentine Financial Crisis: State Liability Under BITs And The Legitimacy Of The ICSID System*, 3 AJWH 199, 201 (2008).
[38] Julia Hueckel, *Rebalancing Legitimacy and Sovereignty in International Investment Agreements*, 61 Emory LJ. 601, 603 (2012).
[39] *Id*. at 613.
[40] Hueckel supra note 38, at 610.
[41] *ICA Against India Joining Global Dispute Settlement Body*, BUSINESS LINE https://www.thehindubusinessline.com/todays-paper/tp-others/article29064097.ece (Mar. 13, 2021).

favour of developed countries and the Convention makes no provision for recourse for review on ground of public policy violation.[42] This caveat seems very agreeable in retrospect. There is pressing need to balance the rights of investment stakeholders, for promotion of investment regime. The imparity in balance of power is evident via the concept of "regulatory chill"[43] which means that national government freeze new regulations for public good in fear of possible investment arbitration proceedings by investors. This phenomenon shows the leverage an individual investor has on policy development of a nation, which hinders the ability of governments to decide what's best for their citizens. Foreign investment is a necessary evil for development, thus to appear investor friendly, developing states are willing to limit their rights to regulate internal matters, and are willing to sacrifice their sovereignty.[44]

III. WORLD INVESTMENT COURT (WIC)

It is proposed that a WIC will mitigate the ISDS crisis. Academic scholars like *Goldhaber* made a case for WIC in his 2004 article 'Wanted: A World Investment Court', in 2008 *Van Harten* wrote a paper titled 'A Case for an International Investment Court', followed by *Subedi* in 2012 who made a proposals for WIC in 'International Investment Law: Reconciling Policy and Principle'. Thus the need for WIC was identified and promoted insce the beginning of the century.

In practice, the proposal of WIC first manifested in 2015 EU's Concept paper to USA proposing reforms in the TTIP, one of the reform was inclusion of Bilateral Investment Court (BIC), as the default dispute settlement mechanism.[45] It enshrined a provision for appellate mechanism as well as enforcement of judgements by the New York Convention 1958 or the Convention, 1965.[46] While the idea was only proposed in TTIP, BIC has been included in the Canada-EU Comprehensive Trade and Economic Agreement (CETA) 2016 and the EU-Vietnam BIT 2015. It is crystal clear that EU is the torchbearer in ISDS reform by establishing an Investment Court System (ICS). It is pertinent to understand the relevant provisions of these treaties which may act as blue print for the WIC.

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[42] Abhisar Vidyarthi, *Revisiting India's Position To Not Join The ICSID Convention*, WOLTERS KLUWER (Mar.11, 2021), http://arbitrationblog.kluwerarbitration.com/2020/08/02/revisiting-indias-position-to-not-join-the-icsid-convention/

[43] Kyla Tienhaara, *'Regulatory Chill And The Threat Of Arbitration: A View From Political Science'*, in EVOLUTION IN INVESTMENT TREATY LAW AND ARBITRATION 606–628 (Kate Miles & Chester Brown, CUP) (2011).

[44] Butler & Subedi supra note 3, at 59.

[45] *Concept Paper: Investment In TTIP and Beyond - The Path For Reform: Enhancing The Right To Regulate And Moving From Current Ad Hoc Arbitration Towards An Investment Court*, EU, 2015 (Mar. 15, 2021) https://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153408.PDF

[46] *Commission Draft Text TTIP*, EU, 2015 (Mar. 15, 2021) https://trade.ec.europa.eu/doclib/docs/2015/september/tradoc_153807.pdf

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(A) Bilateral Investment Court

Article 9, in the Proposal under TTIP establishes 'Tribunal of First instance' composed of 15 judges, 5 each from EU, US and Third party for a term of 6 years. The judges shall be appointed by the Committee, based on qualifications prescribed. Article 8.23 of CETA requires parties to submit the dispute to a Tribunal, the constitution of which provided in Article 8.27 and is similar to that of the provision of TTIP. Article 3.38 of EU-Vietnam BIT provides for a similar mechanism. Although using strict judicial terminology the Court shall have aspects of arbitration in the composition of tribunal in panel of three and manner of dispute submission to the tribunal via ICSID Rules, UNCITRAL Rules or any other rules agreed upon.[47] The significant difference would be the formation of the tribunal where the parties would have no autonomy, and this will do away with the tribunal impartiality and transparency. The existence of such a tribunal will also enable a balance of power between investor and State.

(B) Appellate Mechanism

Article 10 of the TTIP establishes appellate court jointly by both countries, which compose of 6 members, equally divided between nationals of EU, US and third countries. The appellate tribunal is to hear the matters in tribunal of three, chaired by member of third country. It is left to the liberty of the appellate tribunal to draw up their working procedures. The establishment of this mechanism shall ensure review of mistake of law and fact and thereby safeguard legitimacy, transparency and predictability of the investment regime. Article 8.28 of CETA allows for review and appeal of awards by appellate tribunal. However CETA goes on to list the grounds on which appeal can be made, i.e it limits the jurisdiction of the appellate tribunal to errors in application and interpretation of law, error of facts including domestic legislation applicable and on grounds mentioned in Article 52(1) (a) to (e) of the Convention. The establishment of the CETA Appellate tribunal is given to the CETA Joint Committee Similarly Article 3.39 of EU-Vietnam BIT incorporates appeal mechanism. The establishment of such Appellate mechanism would ensure consistency interpretation leading to coherent investment jurisprudence. The existence of appellate mechanism will legitimize the awards, which will based on consistent principle, following.

(C) Multilateral Investment Court

Article 12, TTIP states that bilateral court may cease to exist giving way to a multilateral court thus establishing the larger goal of a reformed Multilateral dispute settlement mechanism in investment regime. Bilateral courts but a stepping stone to establishment of multilateral courts

[47] Howard supra note 8, at 42.

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for investment disputes,[48] which would emerge as a self-standing body not just for dispute settlement between EUI and US, but different partners.[49] Similar provision exists in CETA's Article 8.29 which eventually aims to peruse a multilateral investment tribunal and appellate mechanism between different partners, so does Article 3.41 of EU-Vietnam BIT.

These three instruments provide an opportunity to reform and improve the current investment regime, by proposing and incorporating an alternate mechanism of tribunal composition it addresses the criticism of tribunal imparity and transparency, and balance of power. The establishment of appellate mechanism redresses the criticism of inconsistent interpretation. Both these propositions together protect the sovereignty of nations and legitimize the investment regime and promote transparency as the ISDS will be open to third parties.

IV. STATUS QUO – UNCITRAL WORKING GROUP III

The UNCITRAL Working Groups in the previous sessions identified the lacunas of current ISID, and propose to rectify them. The 40th session of Working Group III was dedicated to 'possible reforms to ISDS'. The reforms were taken under two heads, incremental reforms and structural reform. The former saw the attempt to remedy the criticisms on tribunal impartiality and independence by proposing Code of conduct for adjudicators, it incorporates provisions on impartiality and independence, conflict of interest, double hatting, confidentiality, and integrity.[50] The structure reform aims at up haul of ICSID, by proposing a permanent tribunal for ISID and an appellate mechanism. These structural reforms are similar to the reforms EU adopted in its BIT ISID, one might as well say that they serve as a blue-print for the UNCITRAL Working Group to establish a WIC de facto leadership of EU has already proposed ISDS reforms[51] Thus it is a green signal that the purpose of this paper and the global consensus is unified, and it will not be long before the ISID comes in to existence.

(A) Criticisms

The venture of WIC is not one without criticisms; first, it is argued that an attempt to attain consistency would lead to the establishment of 'rule of precedent' which might stagnate the investment jurisprudential development.[52] Second, a structural question arises as to who shall

[48] *Investment In TTIP And Beyond – The Path For Reform*, EU 2015, 4 (Mar. 15, 2021) https://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153408.PDF
[49] *Id*, at 11
[50] United Nations Commission on International Trade Law Working Group III, *'Draft Code of Conduct'*, UNCITRAL (Mar. 20, 2021) http://undocs.org/en/A/CN.9/WG.III/WP.201
[51] Chiara Giorgetti, et al, *Reforming International Investment Arbitration: An Introduction*, 18 LPICT 303, 305 (2020).
[52] Irene M. Ten Cate, *The Costs Of Consistency: Precedent In Investment Treaty Arbitration*, 51 COLUM. J. TRANSNAT'L L. 418, 419 (2013).

appoint the panel of judges, acceptable to all members and investors.[53] Third, an allegation from investors is inevitable, that the panel is State biased, as it might be States who play a major role in establishment of the Court and appointment of the judges. While the former question has also arisen in the WTO regime leading to Appellate Body paralysis, it goes without saying that the decisions of WIC can have persuasive value and not precedential. The second and third critics can be addressed by establishment of a WIO. A WIO would provide a clean slate for the operation of international investment regime, and a structural backbone to the working of WIC. The representations in WTO would ensure adequate presentation of host states and home states representing the interests' adequately.

V. CONCLUSION

Establishment of a WIC will eventually lead to formation of a WIO, I say because of following reasons; firstly, the proposed WIC by UNCITRAL Working Group is a western initiative, wholly under de facto leadership of EU and its blueprints; this might arouse resistance from the developing nations on ground of WIC being north biased. To be universally accepted, WIC must be handiwork of the global south and north equally, this can be achieved by a WTO like framework which represents all members; and like the Ministerial Conferences take major administrative decisions, including that of appointments. Thus, WIO based on a balanced multilateral agreement where developing nations in the form of blocks participate to leverage their interests would promote an inclusive system.[54] Secondly, WIO would be an exclusive bureaucratic apparatus supplementing the WIC, this is akin to the Secretariat of ICSID, and the same can be merged into the WIO, this platform will promote a clean slate to the new regime. Thirdly a futuristic ambitious character of the WIO could be to assimilate the scattered regime of 2343 BITs, into a standardized investment framework which can be utilized by States with necessary modifications. Even though the WIC might precede the WIO, these arguments signal that the establishment of WIC would inevitably pave way for WIO.

The global community has recognized the need to reform ICSID and are working towards establishment of a WIC. Although WIC is an apt solution, it is only a part solution. Establishment of a WIO would provide a holistic framework for the functioning of international investment regime. The defiance against the ICISD has been simmering for over a decade, along with the criticisms discussed above and denounced of the Convention by States,[55] South Africa

[53] Howard supra note 8, at 39.
[54] Butler & Subedi supra note 3, at 59.
[55] José Carlos Bernal Rivera, *Life After ICSID: 10Th Anniversary Of Bolivia's Withdrawal From ICSID*, WOLTERS KLUWER (Mar. 11, 2021) http://arbitrationblog.kluwerarbitration.com/2017/08/12/life-icsid-10th-anniversary-bolivias-withdrawal-icsid/

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has been terminating its BITs with the aim of establishing domestic legislation to deal with foreign investment, treating foreign investors at par with domestic investors.[56] Thus, it isn't merely ISDS crisis, but investment regime crisis which needs a complete overhaul and WIC and WIO together will achieve the necessary reformation.

(A) Suggestion for Establishing WIO

- *Two birds', one stone*: UNCITRAL Working Group III can incorporate the proposal for establishment of WIO in its current initiate for a WIC. This will lead to a holistic proposal for the new international investment regime; as well accelerate the establishment of WIO whose need shall be inventible in the near future.
- *Segregation is the key*: It is suggested that investment regime must be merged with the WTO however, the organ is undergoing a crisis itself and would not be able to serve the investment regime. WTO with its objective of promoting free and fair trade will not be able to do justice to the investment regime.
- *Established with a motto*: International Organs are established for fulfilment of an objective. The prospective WIO will ensure a balance between the public and private interest of a private individual and State.

Lessons from the past: WIO can adopt the mechanism of WTO, where every nation has a representative to the Ministerial Conference, although a caveat would be not to adhere by "absolute consensus" rule for decision making, rather opt for "majority-consensus."

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[56] Butler & Subedi supra note 3, at 44.

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