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Non-legislative activities

Operation of the transparency repository

Note by the Secretariat

Addendum

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I. Introduction

1. The Commission may wish to recall that, at its forty-sixth session, in 2013, it adopted the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (the “Rules on Transparency”).¹ Article 8 of the Rules on Transparency envisages the establishment of a repository of published information (the “transparency repository”).
2. The Commission may wish to recall that the General Assembly requested the Secretary-General to establish and operate, through the secretariat of the Commission, the transparency repository, initially as a pilot project funded entirely by voluntary contributions until the end of 2016.² The Commission may also wish to recall that, from 2016 until 2024, the UNCITRAL secretariat has operated the transparency repository³ as a project funded entirely with voluntary contributions. Those contributions came primarily from the European Union and at different times also from the Fund for International Development of the Organization of the Petroleum Exporting Countries (OPEC/OFID) and later also from the German Federal Ministry for Economic Cooperation and Development (BMZ).⁴
3. The Commission may wish to recall that the General Assembly requested the Secretary-General to continue to operate, through the secretariat of the Commission, the transparency repository, as a continuation of the project, funded entirely by voluntary contributions until the end of 2024.⁵ The Commission may also wish to recall that the General Assembly and the Commission requested the secretariat to keep them informed of developments regarding the funding and budgetary situation of the transparency repository.⁶
4. This report is prepared in response to those requests and provides information on the operation of the project and its funding.

II. Functioning of the transparency repository

5. The transparency repository is a central feature of both the Rules on Transparency and the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (the “Mauritius Convention on Transparency”), together referred to as the “UNCITRAL Transparency Standards”.⁷ It provides a consolidated, transparent and easily accessible global case record database for all investor-State arbitrations conducted pursuant to the UNCITRAL Transparency Standards.⁸ Since 2016, a total of 25 cases involving 14 respondents,⁹ covering disputes in different economic sectors, have been included in the transparency repository.
6. The transparency repository is routinely updated with new cases by a legal officer, responsible for managing and operating it, whose post has been financed from the voluntary contributions referred to in paragraph 2 above. That legal officer is also responsible for promoting the UNCITRAL Transparency Standards. In this context, the Commission may wish to note the relevant activities reported in document [A/CN.9/1174/Add.1](#).

¹ [A/68/17](#), para. 128.

² General Assembly resolution 70/115, para. 2.

³ Available at www.uncitral.org/transparency-registry/registry/index.jsp#economicSector.

⁴ [A/CN.9/1015](#), paras. 1–8; [A/CN.9/1097](#), para. 17.

⁵ General Assembly resolutions 71/135, para. 5; 72/113, para. 6; 75/133, para. 5; 78/103, para. 4.

⁶ General Assembly resolution 78/103, para. 4.

⁷ For information on the uptake of UNCITRAL Transparency Standards, the Commission may wish to refer to section III.B of document [A/CN.9/1172](#), which will be before the Commission at its fifty-seventh session.

⁸ General Assembly resolution 70/115, para. 2.

⁹ Belarus, Bolivia (Plurinational State of), Canada, Colombia, Dominican Republic, European Union, Guinea, India, Mauritius, Mozambique, Netherlands (Kingdom of the), Peru, Serbia and Slovakia.

7. The number of cases in the transparency repository is expected to increase as:
- (a) More States become parties to the Mauritius Convention on Transparency;¹⁰
 - (b) More States use the Rules on Transparency in investor-State dispute settlement cases or apply transparency elements from the Rules on Transparency in arbitral proceedings;¹¹
 - (c) More arbitration rules and institutions emphasize transparency in arbitral proceedings.¹²

8. Those developments are influenced by several parallel processes, including inter-State arrangements, agreements and treaties, such as the Protocol on Investment to the Agreement Establishing the African Continental Free Trade Area on Investment (AfCFTA)¹³, and activities of the UNCITRAL secretariat and its partners promoting the UNCITRAL Transparency Standards. Such additional activities are planned throughout 2024, for example in conjunction with the UNCITRAL Days in different regions, on the occasion of the tenth anniversary of the UNCITRAL Transparency Standards.

III. Funding situation

9. With respect to the funding situation of the transparency repository, the Commission may wish to note that the operation of the transparency repository is funded through August 2024 from voluntary contributions of the European Union and BMZ. The Commission may wish to express its appreciation to them for having provided the funding.

10. As regards future operation of the transparency repository, the Commission may wish to consider different options, including those that the secretariat set out for consideration by the Commission at its fifty-sixth session, i.e., that the Commission recommend to the General Assembly one or a combination of the following options:

Option 1: The General Assembly request the Secretary-General to continue to operate, through the secretariat of the Commission, the repository of published information in accordance with article 8 of the Rules on Transparency, as a continuation of the project until the end of 2027, subject to additional funding.¹⁴

¹⁰ For example, Panama is considering becoming a party to the Mauritius Convention on Transparency. See a note from the Procurator of the Administration in response to the request by the Ministry of Foreign Affairs of Panama on evaluation of signing and ratifying the Mauritius Convention on Transparency, available in Spanish at <http://vocc.procuraduria-admon.gob.pa/sites/default/files/C-060-22%20MINREX%20Otto%20Escart%C3%ADn%20Romero.pdf>.

¹¹ See, for example, *Bacilio Amorrortu vs. Peru* (PCA Case No. 2020-11), *Renco Group Inc. vs. Peru* (PCA Case No. 2019-46) and *Alberto Carrizosa vs. Colombia* (PCA Case No.2018-56) where the Rules on Transparency have been applied by the agreement of the disputing parties pursuant to article 1, paragraph 2(a) of the Rules. See also *Cairn Energy PLC vs. India* (PCA Case No.2016-7) where transparency was addressed by the tribunal in a procedural order. For more cases, please see the transparency repository at www.uncitral.org/transparency-registry/registry/index.aspx.

¹² See, for example, the International Centre for Settlement of Investment Disputes (ICSID) Arbitration Rules (2022) and the Hague Rules on Business and Human Rights Arbitration.

¹³ In its draft form dated January 2023 (available at www.bilaterals.org/IMG/pdf/en_-_draft_protocol_of_the_afcfta_on_investment.pdf), the Protocol envisages, within 12 months of its adoption, the adoption of an annex as an integral part of the Protocol that would outline the Rules and Procedures governing Dispute Prevention, Management and Resolution of disputes covered by the Protocol (see article 46 (3)). An earlier draft of the Protocol dated November 2021 (available at [afcfta_protocol_on_investment_first_draft.pdf](http://www.bilaterals.org/IMG/pdf/en_-_draft_protocol_of_the_afcfta_on_investment_first_draft.pdf)) set out the draft annex which contains a provision encouraging both disputing parties and arbitral tribunals to adhere to the Rules on Transparency (see article 15 of the annex). Accordingly, States parties to the Protocol have anticipated to use the Rules on Transparency in ISDS and might have also contemplated the adoption of the Mauritius Convention on Transparency.

¹⁴ As of the date of this note, the secretariat had received an expression of interest from the

Option 2: The General Assembly request the Secretary-General to continue to operate, through the secretariat of the Commission, the repository of published information in accordance with article 8 of the Rules on Transparency, as part of the regular activities of the UNCITRAL secretariat, with a focus on the operation of the repository of published information, but with no priority of awareness-related activities pertaining to the UNCITRAL Transparency Standards over other awareness-raising activities.¹⁵

11. Depending on the option chosen, the Commission may wish to reiterate its appeal to all States, international organizations and other interested entities to consider making contributions towards the operation of the transparency repository, if possible, in the form of a multi-year contributions, so as to facilitate planning, and to recommend to the General Assembly that the UNCITRAL secretariat keep the General Assembly and the Commission informed of developments regarding the funding and budgetary situation of the transparency repository based on its operation.

12. As has been the practice, and regardless of the option chosen, the UNCITRAL secretariat can continue providing regular reports to the Commission regarding the transparency repository.

European Union to continue providing the funding for the project, which should allow its continuation until the end of 2027.

¹⁵ See [A/CN.9/1136](#), para. 25.