Voices promoting reform of the current investor-State dispute settlement (ISDS) system seem to be growing louder, and calls for change more frequent and from a broader set of actors. Many refer to a crisis, and point out challenges and concerns, when explaining why ISDS reform is necessary or convenient, and should be imminent.

The current system is made up of well over 3,000 international investment agreements (IIAs) and an unknown number of contracts between investors and States with international investment dispute settlement provisions, underpinning an ever-increasing number of disputes. Despite what could be described as the growing popularity of ISDS as a mechanism for addressing investor-State controversies, it is hard to find someone (other than lawyers) completely content with the current system.

The IIA universe is a patchwork of agreements, some of which were concluded over half a century ago, and none of which is identical to another. It is no wonder, then, that the shortcomings identified by UNCTAD and others exist. These include a “perceived deficit of legitimacy and transparency; contradictions between arbitral awards; difficulties in correcting erroneous arbitral decisions; questions about the independence and impartiality of arbitrators, and concerns relating to the costs and time of arbitral procedures.”¹ All these concerns are legitimate and arise from the practical experience of the system, especially since the mid-1990s when most of the ISDS cases have taken place.

It is not surprising that the rate of new IIAs started to decline as the number of ISDS cases began to escalate. The mid- and late-1990s marked the beginning of an upward trend in disputes between investors and States that is likely to continue in the years to come. As the number of ISDS cases increased, so too did their complexity and the scope of the measures challenged. In fact, many critics and stakeholders have expressed understandable concerns over the challenging of policy instruments to protect the environment or the public interest under ISDS. The lack of predictability with regard to the outcome, and of consistency in the awards, increases the unease. The fact is that many of

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these agreements were entered into when issues such as climate change and environment were not at the forefront of public policy, and when investment flows were negligible compared to today.

UNCTAD suggested five main reform paths for the current ISDS system:

- Promoting alternative dispute resolution;
- Tailoring the existing system through individual IIAs;
- Limiting investor access to ISDS;
- Introducing an appeals facility;
- Creating a standing international investment court.