

February 8, 2012

Via e-mail: uncitral@uncitral.org
Fax: 01143126060-5813
The Honorable Renaud Sorieul
Secretary
United Nations Commission on
International Trade Law --UNCITRAL
Vienna International Centre
1400 Vienna
Austria

Dear Mr. Secretary,

On February 1, 2012, Latin American jurist Jose Daniel Amado sent a letter to the UN Secretary-General expressing concern regarding the misuse of the Bilateral Investment Treaty (BIT) between Ecuador and the United States to affect private litigation in Ecuador and judgments issued by Ecuadorian courts in that litigation (Attachment A).

The letter noted that the BIT arbitration panel, quoting Articles 26 and 32 of the UNCITRAL Arbitration Rules, recently issued an interim award directing Ecuador to “take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against the [defendant]” in the private case (Attachment B).

We are writing to you to express our concern about the potential risks arising from such Interim Award, which distorts the international investment treaty system to the point where it loses its credibility and effectiveness in promoting investment and resolving claims between States and their investors. Allowing BIT panels to determine recognition and enforcement issues in private litigation transforms them into venues of final appeal in a way that was never intended and offends the inherent trustworthiness of legal systems around the world to determine matters for themselves. BIT panel awards ordering States to interfere in private judicial proceedings between different parties is a direct violation of well settled principles of sovereignty and, in this particular case, human rights under international law.

For the above reasons, and in light of the forthcoming session of Working Group II (Arbitration and Conciliation) concerning treaty-based investor-State relations, the undersigned respectfully call upon the Secretariat to ensure that UNCITRAL takes due note of the present situation and

further evaluates the above-mentioned proceeding under its Arbitration Rules in order to make sure that it is not used improperly in contravention of international law.

Sincerely,

Donald K. Anton

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Others to Follow

cc: Mr. Ban Ki-moon, Secretary-General of the United Nations (without attachments)