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## **Resource requirements to implement investor-State dispute settlement (ISDS) reform**

**Note by the Secretariat**

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## I. Introduction

1. At its fifty-third session, the Commission considered the resource requirements for the implementation of the work programme with respect to investor-State dispute settlement (ISDS) reform (referred to below as the “ISDS Project”) based on a note prepared by the Secretariat ([A/CN.9/1011](#)).<sup>1</sup> Due to the limited time available at that session and divergence in views, the Commission was not able to come to a consensus on a proposed way forward and agreed that the topic would be considered at its next session in 2021. In the meantime, the Commission encouraged the Working Group to continue to make progress on its mandate.<sup>2</sup>

2. The Working Group, at its thirty-ninth session in October 2020, agreed on the process to develop a work and resourcing plan to support its work ([A/CN.9/1044](#), para. 113). Delegations interested in participating in the development of an initial draft of the plan identified themselves in November 2020. With the support of the Secretariat, the chair and the rapporteur of Working Group III worked with those delegations from November 2020 to January 2021 to prepare an initial draft, which was then open for comments. Based on the inputs provided on the initial draft, including those made during the informal consultations held on 22 and 23 February 2021, a draft work and resourcing plan was prepared as contained in document [A/CN.9/WG.III/WP.206](#).

3. The Working Group, at its resumed fortieth session in May 2021, considered the work and resourcing plan ([A/CN.9/1054](#)). In light of the concerns expressed about the workplan, a revised workplan was presented and discussed (see Annex in document [A/CN.9/1054](#), hereinafter referred to as the “Workplan”). It was generally accepted that the revised workplan provided a workable roadmap for progress to be made by the Working Group, while emphasis was also put on the flexibility of any plan, so that the details could be adapted as progress was made. It was recalled that the workplan was, in this regard, only a guide for the Working Group, and that instead, the focus should be on the resource request and the factors that were driving it. Accordingly, while some reservations were expressed about certain aspects of the revised workplan, it was generally felt that working on the basis of a resource request for one additional one-week session per year from 2022 to 2025, was a workable compromise reflecting the divergence in views. It was noted that the resource implications in document [A/CN.9/WG.III/WP.206](#) would need to be updated on the basis of the Workplan and in close consultation with the Department for General Assembly and Conference Management (DGACM) so as to provide an estimate of the required additional conference and supporting resources from 2022 to 2025.

4. Accordingly, this note provides the resource requirements to implement the ISDS Project to assist the Commission in making an informed decision on whether to request such resources from the General Assembly.

## II. Resource requirements

### General

5. Based on the Workplan, one additional week of conference time is required for a period of four years from 2022 to 2025. This would allow for a total of 15 weeks of conference time until the first half of 2026 (11 within existing resources and 4 through additional resources), which would be followed by deliberations by the Commission to finalize the project in 2026 at its fifty-ninth session. The Workplan envisages the Commission allocating the two sessions of Working Group III prior to the Commission session instead of one in the spring and one in the fall.

<sup>1</sup> *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, Part two, paras. 102–118.

<sup>2</sup> *Ibid.*, para. 119.

6. The Workplan also proposes that certain reform options could be considered by the Commission prior to the fifty-ninth session, beginning as early as the fifty-fifth session in 2022. Therefore, existing conference time of the Commission would need to be allocated to those topics during the fifty-fifth to the fifty-eighth session of the Commission.

7. Meetings of the Commission and its working groups are held using conference time allotted to UNCITRAL, which is currently a maximum of fifteen weeks per year. Therefore, the Commission could consider allocating any unused conference time of the Commission<sup>3</sup> or other working groups to the ISDS Project, which had been the case for the unused week of the Commission in 2019<sup>4</sup> and the case when preparing the Rotterdam Rules.<sup>5</sup>

8. However, this is subject to change on a yearly basis, as the Commission reiterated that the duration of each of its annual sessions was to be determined on a case-by-case basis depending on the expected workload. For example, this year, the Commission decided to hold a three-week session. Furthermore, determination by the Commission to allocate its unused conference time to a working group during its annual session (usually held in June or July) poses practical challenges of identifying a suitable conference time in the second half of the year and rescheduling other working groups. It also leads to difficulties in planning, as the Working Group would not be able to know whether it would meet for one or two weeks in the second half of the year and if so, when.

9. According to the Workplan, the Working Group proposes to have three one-week sessions. The Commission may wish to consider whether the Working Group should hold one two-week session or whether to spread them through the year. The Commission may wish to further consider whether measures should be put in place to allow for remote participation by delegations to address concerns expressed about their costs of travel. Such changes in the pattern of meetings and introduction of means to facilitate remote participation would require further consultations with the Department for General Assembly and Conference Management (DGACM) and may pose additional programme budget implications.

### **Programme budget implications**

10. If the Commission decides to recommend to the General Assembly that additional conference time be allocated to the Commission for advancing the ISDS Project, this will then need to be reflected in the draft resolution submitted to the Sixth Committee of the General Assembly. In that process, the budgetary implications of the request on the programme budget (mainly Section 2 – General Assembly and Economic and Social Council affairs and conference management and Section 8 – Legal affairs) would be reviewed by different bodies, including the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and the Fifth Committee of the General Assembly.

11. This section provides an overview of the programme budget implications. However, it should be noted that the budget implications could vary depending on the actual request made by the Commission (including the venue of the meetings, their format, and which duty station provides the relevant services). All figures in this section are subject to further verification by the Programme Planning and Budget Division (PPBD). The Commission may wish to further note that the figures below

<sup>3</sup> With regard to unused Commission time, the Commission had indicated its understanding that two weeks for its annual sessions would generally be sufficient. Ibid, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 331.

<sup>4</sup> Ibid., para. 329.

<sup>5</sup> Ibid., *Fifty-sixth Session, Supplement No. 17 (A/56/17)*, paras. 376–383 and 425(c). The Commission, in 2001, increased the number of working groups from three to six, each of which would generally hold two annual sessions of one week each. However, the working group tasked with the preparation of the Rotterdam Rules was authorized by the Commission to hold two-week sessions from 2002 to 2008, except for its session in September 2002, which met for one week.

relate to the formal meetings of the Working Group and do not take into resources required for translation or interpretation during informal meetings.

#### *Conference resources*

12. An additional session of the Working Group would consist of 10 meetings (2 per day consisting of three hours) either in New York or Vienna. The Commission may wish to indicate a preference for the venue as this would have an impact on the budget implication. In addition to the provisions of the venue and conference servicing, these meetings would require interpretation in all official languages of the United Nations, which would need to be reflected in the budget of DGACM. This would entail additional resource requirements for meetings services in the amount of approximately \$160,000 per year (Vienna-based figures).

#### *Document resources*

13. An additional week of conference time would increase the documentation to be handled by DGACM, mainly translation of the documents into the official languages of the United Nations. This would have to be reflected in the budget of DGACM. Based on previous sessions of the Working Group, the Secretariat would prepare an average of two to three working papers and would expect to process four to five submissions by States and others per a one-week session. Overall, the additional document workload would be 7 pre-session documents (total of 59,500 words),<sup>6</sup> 5 in-session documents (total of 10,700 words) and one post-session document (total of 10,700 words). This would entail additional resource requirements for documentation services in the amount of \$318,697.<sup>7</sup>

14. If the Commission were to decide that the additional weeks would be held as an extension of scheduled sessions (making it a two-week session), the additional resource requirements for documentation services could be reduced to \$243,000 per session.<sup>8</sup>

#### *UNCITRAL Secretariat resources*

15. The servicing of an additional session of the Working Group and providing continued support to an increased number of informal meetings would require the current team servicing Working Group III to be expanded. This can be achieved by either relieving the current team members from other duties or including other Secretariat staff members as new team members. However, both options would likely have a negative impact on the Secretariat's role in supporting other work programmes of the Commission.

16. To ensure that the work programme of the Commission is not adversely affected, three new posts would be required as outlined in table 2. This would entail additional resource requirements ranging from \$353,400 to \$410,100 in 2022 depending on whether the post is to be funded by regular or extrabudgetary resources.<sup>9</sup>

17. The Commission may also take into consideration contributions to the UNCITRAL trust fund for granting travel assistance to developing countries, aimed

<sup>6</sup> One provisional agenda, two to three notes by the Secretariat and four submissions by States and others, all estimated at 8,500 words. There is a limitation on documents originating in the Secretariat, which should be no longer than 16 pages (8,500 words). Intergovernmental bodies are invited to consider, where appropriate, reducing their report to 20 pages (10,700 words). See General Assembly Resolution 52/214, section B, paras. 4 and 7 (reiterated in 53/208, 59/265).

<sup>7</sup> Based on figures provided by document management services in Vienna. Cost of translation of one English Standard Page (ESP, which consists of 330 words) into one other language is set at 260 USD. The programme budget implication rate may vary depending on where the document services are to be provided.

<sup>8</sup> This is based on the assumption that there would be no need to produce a separate provisional agenda nor the post-session report.

<sup>9</sup> Based on UNOV/UNODC Revised Standard Salary Costs (2020–2023) for Vienna. For the post funded by the regular budget, the figure for “continuing” staff cost in 2021 was used.

at enabling the participation of representatives of developing States in the deliberations of Working Group III as well as in intersessional meetings.<sup>10</sup> Should such contributions continue in the future, the administrative support for providing travel assistance to delegations to attend the additional Working Group session will also likely grow.

Table 1  
**Human resources**

	<i>Regular budget</i>	<i>Extrabudgetary resources</i>
Legal Officer (P-3)	\$139 600	\$169 500
Associate Legal Officer (P-2)	\$115 100	\$133 700
Administrative Assistant (G-6)	\$98 700	\$106 900
<b>Total</b>	<b>\$353 400</b>	<b>\$410 100</b>

18. Moreover, additional resources in the amount of \$13,000 would be required to acquire furniture and equipment for the new staff members; \$5,400 for ICT-related services; and \$13,593 for travel expenses of staff to service working group sessions in New York.

### Summary

19. In conclusion, the programme budget implication for holding one additional Working Group session per year would be as follows:

Table 2  
**Programme budget implications per year**

<i>Estimates</i>		
Section 2 – General Assembly and Economic and Social Council Affairs and Conference Management	Conference resources	\$160 000
	Document resources	\$243 000 to \$318 697
Section 8 – Legal affairs	Human resources	\$353 400 to \$410 100
	Other	\$31 993
<b>Total</b>		<b>\$788 393 to \$921 060</b>

## III. Concluding remarks

20. As mentioned in the introduction, the objective of this note is to provide the Commission with information on the resource requirement to implement the ISDS Project. Upon review, it may wish to determine whether to recommend to the General Assembly that additional conference and supporting resources be allocated to the Secretariat for advancing and completing the ISDS Project for a period of 4 years (2022–2025). Considering the budget situation of the United Nations, it will be challenging to obtain additional regular budget resources when the overall budget is being heavily scrutinized (A/CN.9/970, para. 49). Therefore, it would be important for the Commission to signal, in its recommendation to the General Assembly, the significance of ISDS reforms and the need to deliver results within the set time frame.

<sup>10</sup> Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17), para. 165.