



General Assembly

Distr.: Limited
14 July 2020

Original: English

**United Nations Commission on
International Trade Law
Working Group III (Investor-State Dispute
Settlement Reform)
Thirty-ninth session
Vienna, 5–9 October 2020**

Annotated provisional agenda

I. Provisional agenda

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Possible reform of investor-State dispute settlement (ISDS).
5. Other business.
6. Adoption of the report.

II. Composition of the Working Group

1. The Working Group is composed of all States members of the Commission, which are the following: Algeria (2025), Argentina (2022), Australia (2022), Austria (2022), Belarus (2022), Belgium (2025), Brazil (2022), Burundi (2022), Cameroon (2025), Canada (2025), Chile (2022), China (2025), Colombia (2022), Côte d'Ivoire (2025), Croatia (2025), Czechia (2022), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Honduras (2025), Hungary (2025), India (2022), Indonesia (2025), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2025), Kenya (2022), Lebanon (2022), Lesotho (2022), Libya (2022), Malaysia (2025), Mali (2025), Mauritius (2022), Mexico (2025), Nigeria (2022), Pakistan (2022), Peru (2025), Philippines (2022), Poland (2022), Republic of Korea (2025), Romania (2022), Russian Federation (2025), Singapore (2025), South Africa (2025), Spain (2022), Sri Lanka (2022), Switzerland (2025), Thailand (2022), Turkey (2022), Uganda (2022), Ukraine (2025), United Kingdom of Great Britain and Northern Ireland (2025), United States of America (2022), Venezuela (Bolivarian Republic of) (2022), Viet Nam (2025) and Zimbabwe (2025).

2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the deliberations. In addition, invited international non-governmental organizations may attend the



session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

III. Annotations to agenda items

Item 1. Opening of the session

3. The thirty-ninth session of the Working Group will be held from 5 to 9 October 2020 at the Vienna International Centre (see para. 16 below).

Item 2. Election of officers

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

Item 4. Possible reform of investor-State dispute settlement (ISDS)

(a) Previous deliberations

5. At its fiftieth session in 2017, the Commission entrusted Working Group III with a broad mandate to work on the possible reform of investor-State dispute settlement (ISDS). It also agreed that in line with the UNCITRAL process, the Working Group would, in discharging that mandate, ensure that the deliberations, while benefiting from the widest possible breadth of available expertise from all stakeholders, would be government-led with high-level input from all governments, consensus-based and be fully transparent. The Working Group would proceed to: first, identify and consider concerns regarding ISDS; second, consider whether reform was desirable in light of any identified concerns; and third, if the Working Group were to conclude that reform was desirable, develop any relevant solutions to be recommended to the Commission. The Commission agreed that broad discretion should be left to the Working Group in discharging its mandate, and that any solutions devised would be designed taking into account the ongoing work of relevant international organizations and with a view to allowing each State the choice of whether and to what extent it wishes to adopt the relevant solution(s).¹

6. From its thirty-fourth to thirty-seventh session, the Working Group identified and discussed concerns regarding ISDS and considered that reform was desirable in light of the identified concerns.²

7. At its fifty-second session, in 2019, the Commission expressed its satisfaction with the progress made by the Working Group through a constructive, inclusive and transparent process and for the decision of the Working Group to elaborate and develop multiple potential reform solutions simultaneously. The Commission also expressed its appreciation for the support provided by the Secretariat.³

8. The Commission further expressed its appreciation for the contributions to the UNCITRAL trust fund from the European Union, the German Federal Ministry for Economic Cooperation and Development (BMZ), and the Swiss Agency for Development and Cooperation (SDC), aimed at allowing the participation of representatives of developing States in the deliberations of the Working Group as well as participation in regional intersessional meetings, and was informed about ongoing efforts by the Secretariat to secure additional voluntary contributions. States were urged to contribute to, and support, those efforts. The Commission also welcomed the

¹ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 264.

² The deliberations and decisions of the Working Group at its thirty-fourth to thirty-seventh sessions are set out in documents [A/CN.9/930/Rev.1](#), [A/CN.9/930/Rev.1/Add.1](#); [A/CN.9/935](#); [A/CN.9/964](#); and [A/CN.9/970](#), respectively.

³ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 169.

outreach activities of the Secretariat aimed at raising awareness about the work of the Working Group and ensuring that the process would remain inclusive and fully transparent.⁴

9. At its thirty-eighth session (Vienna, 14–18 October 2019), the Working Group agreed on a project schedule to discuss, elaborate and develop multiple potential reform solutions simultaneously and commenced its consideration of reform options.⁵ It was agreed that the thirty-ninth session would be allocated to consider the following reform options: (i) dispute prevention and mitigation as well as other means of alternative dispute resolution; (ii) treaty interpretation by States parties; (iii) security for costs; (iv) means to address frivolous claims; (v) multiple proceedings including counterclaims; and (vi) reflective loss and shareholder claims based on joint work with the Organization for Economic Cooperation and Development. In addition, it was agreed that the Working Group would consider how to plan its future work including whether to request additional session time to the Commission depending on the workload.

10. At that session, the Working Group also considered the establishment of an advisory centre, a code of conduct for adjudicators and the regulation of third party funding.⁶ At the resumed thirty-eighth session (Vienna, 20–24 January 2020), the Working Group considered the appellate and multilateral court mechanisms as well as the selection and appointment of ISDS tribunal members.⁷

(b) Documentation

11. At its thirty-ninth session, the Working Group is expected to continue its consideration of ISDS reform based on the following documents, which can be downloaded from the UNCITRAL website (background documents are no longer available at Working Group sessions in printed form):

(a) Documents prepared by the Secretariat:

- [A/CN.9/WG.III/WP.190](#) on dispute prevention, mitigation and mediation;
- [A/CN.9/WG.III/WP.191](#) on treaty interpretation by States parties;
- [A/CN.9/WG.III/WP.192](#) on security for costs and frivolous claims;
- [A/CN.9/WG.III/WP.193](#) on multiple proceedings and counterclaims;
- [A/CN.9/WG.III/WP.194](#) on multilateral instrument on ISDS reform.

(b) Submissions from Governments: Indonesia ([A/CN.9/WG.III/WP.156](#)); European Union and its member States ([A/CN.9/WG.III/WP.159](#) and [Add.1](#)); Morocco ([A/CN.9/WG.III/WP.161](#) and [A/CN.9/WG.III/WP.195](#)); Thailand ([A/CN.9/WG.III/WP.162](#)); Chile, Israel and Japan ([A/CN.9/WG.III/WP.163](#)); Costa Rica ([A/CN.9/WG.III/WP.164](#) and [A/CN.9/WG.III/WP.178](#)); Brazil ([A/CN.9/WG.III/WP.171](#)); Colombia ([A/CN.9/WG.III/WP.173](#)); Turkey ([A/CN.9/WG.III/WP.174](#) and [A/CN.9/WG.III/WP.197](#)); Ecuador ([A/CN.9/WG.III/WP.175](#)); South Africa ([A/CN.9/WG.III/WP.176](#)); China ([A/CN.9/WG.III/WP.177](#)); the Republic of Korea ([A/CN.9/WG.III/WP.179](#)); Bahrain ([A/CN.9/WG.III/WP.180](#)); Mali ([A/CN.9/WG.III/WP.181](#)); Submission from the Governments of Chile, Israel, Japan, Mexico and Peru ([A/CN.9/WG.III/WP.182](#)); Kuwait ([A/CN.9/WG.III/WP.186](#)); Kazakhstan ([A/CN.9/WG.III/WP.187](#)); Russian Federation ([A/CN.9/WG.III/WP.188](#) and [Add.1](#)); The Netherlands, Peru and Thailand ([A/CN.9/WG.III/WP.196](#)).

12. Any additional submissions received from Governments will be made available on the Working Group III web page. This web page also contains submissions and

⁴ Ibid., paras. 165 and 166.

⁵ Report of the Working Group at its thirty-eighth session ([A/CN.9/1004](#)), paras. 25 and 27.

⁶ Report of the Working Group at its thirty-eighth session ([A/CN.9/1004](#)).

⁷ Report of the Working Group at its resumed thirty-eighth session ([A/CN.9/1004/Add.1](#)).

statements by international organizations and selected research material as well as a bibliography of recent articles (see https://uncitral.un.org/en/working_groups/3/investor-state).

13. The Working Group may also wish to make reference to the following background documents also available on the UNCITRAL website:

- Reports of the United Nations Commission on International Trade Law on the work of its forty-eighth session (Official Records of the General Assembly, Seventieth Session, Supplement No. 17 ([A/70/17](#))); forty-ninth session (Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 ([A/71/17](#))); fiftieth session (Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 ([A/72/17](#))); fifty-first session (Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 ([A/73/17](#))); and fifty-second session (Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 ([A/74/17](#)));
- Report of the Working Group on the work of its thirty-fourth session ([A/CN.9/930/Rev.1](#) and [A/CN.9/930/Add.1/Rev.1](#)); thirty-fifth session ([A/CN.9/935](#)); thirty-sixth session ([A/CN.9/964](#)); thirty-seventh session ([A/CN.9/970](#)); thirty-eighth session ([A/CN.9/1004](#)); and the resumed thirty-eighth session ([A/CN.9/1004/Add.1](#));
- Note by the Secretariat on the reform options ([A/CN.9/WG.III/WP.166](#) and its addendum).

14. UNCITRAL documents are posted on the UNCITRAL website upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group III page.

Item 5. Adoption of the report

15. The Working Group may wish to adopt, at the close of its session, a report for submission to the fifty-fourth session of the Commission, scheduled to be held in Vienna, tentatively from 28 June to 16 July 2021 (see para. 16 below).

IV. Format and scheduling of meetings

16. As of the date of this note, the format and the scheduling of the meetings are subject to further determination by the Commission. Detailed information about the duration of the meetings, the meeting hours as well as the decision-taking process including the adoption of the report would be announced on the UNCITRAL website once the Commission has made those determinations.
