



General Assembly

Distr.: Limited
3 July 2022

Original: English

**United Nations Commission on
International Trade Law
Working Group III (Investor-State Dispute
Settlement Reform)
Forty-third session
Vienna, 5–16 September 2022**

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. 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: Afghanistan (2028), Algeria (2025), Argentina (2028), Armenia (2028), Australia (2028), Austria (2028), Belarus (2028), Belgium (2025), Brazil (2028), Bulgaria (2028), Cameroon (2025), Canada (2025), Chile (2028), China (2025), Colombia (2028), Côte d'Ivoire (2025), Croatia (2025), Czechia (2028), Democratic Republic of the Congo (2028), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Greece (2028), Honduras (2025), Hungary (2025), India (2028), Indonesia (2025), Iran (Islamic Republic of) (2028), Iraq (2028), Israel (2028), Italy (2028), Japan (2025), Kenya (2028), Kuwait (2028), Malawi (2028), Malaysia (2025), Mali (2025), Mauritius (2028), Mexico (2025), Morocco (2028), Nigeria (2028), Panama (2028), Peru (2025), Poland (2028), Republic of Korea (2025), Russian Federation (2025), Saudi Arabia (2028), Singapore (2025), Somalia (2028), South Africa (2025), Spain (2028), Switzerland (2025), Thailand (2028), Türkiye (2028), Turkmenistan (2028), Uganda (2028), Ukraine (2025), United Kingdom of Great Britain and Northern Ireland (2025), United States of America (2028), Venezuela (Bolivarian Republic of) (2028), 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 forty-third session of the Working Group will be held from 5 to 16 September 2022 at the Vienna International Centre. Meeting hours and arrangements for participation in the session will be announced on the website of Working Group III.

Item 2. Election of officers

4. In accordance with its practice at sessions prior to the coronavirus disease (COVID-19) pandemic, the Working Group may wish to elect a Chairperson and a Rapporteur.

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

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. From its thirty-eighth to forty-second session, the Working Group considered concrete solutions for ISDS reform.³ At its resumed fortieth session in May 2021, the Working Group considered a workplan to implement ISDS reform and resource requirements.⁴

8. At its fifty-fourth session, in 2021, the Commission decided to recommend to the General Assembly that additional conference (one-week session per year) and human resources be allocated to the Working Group for a single period of four years, from 2022 to 2025, on the condition that the Commission would during its annual session re-evaluate and, if needed, revisit its decision concerning the need for allocating one additional one-week session per year and supporting resources to the Working Group taking into consideration the Working Group's report on the use of

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 The deliberations and decisions of the Working Group at its thirty-eighth to forty-second sessions are set out in documents [A/CN.9/1004*](#); [A/CN.9/1004/Add.1](#); [A/CN.9/1044](#); [A/CN.9/1050](#); [A/CN.9/1054](#); [A/CN.9/1086](#); and [A/CN.9/1092](#).

⁴ See [A/CN.9/1054](#), annex.

its resources.⁵ On 24 December 2021, the General Assembly decided to allocate one additional one-week session per year to Working Group III (ISDS Reform) and the necessary human resources as recommended by the Commission ([A/RES/76/229](#), para. 15). The additional week for 2022 will be utilized for the holding of the forty-third session.

9. At its fifty-fifth session in 2022, the Commission expressed its satisfaction with the progress made by the Working Group and the support provided by the Secretariat.⁶ The Commission also heard an outline of the work to be conducted by the Working Group during the four weeks of session scheduled till the fifty-sixth session of the Commission in 2023. The Working Group was encouraged to submit to the Commission for its consideration a code of conduct with commentary and texts on alternative dispute resolution mechanisms.

Reform options and documentation

10. At its forty-third session, the Working Group is expected to consider some or all of the following reform options based on documents prepared by the Secretariat. The detailed scheduling of the session will be specified in a letter by the Chair in advance of the session taking into account the available conference time and the working method agreed by the Commission at its fifty-fifth session.

<i>Reform options</i>	<i>Pre-session documentation</i>
Code of conduct	A/CN.9/WG.III/WP.216
Mediation	
– Draft provisions on mediation	A/CN.9/WG.III/WP.217
– Draft guidelines on mediation	A/CN.9/WG.III/WP.218
Procedural rules and cross-cutting issues	
– Draft provisions on early dismissal, security for costs, allocation of costs, counterclaims, and third-party funding	A/CN.9/WG.III/WP.219
– Assessment of damages and compensation	A/CN.9/WG.III/WP.220
Multilateral instrument on ISDS reform	A/CN.9/WG.III/WP.221
Advisory centre	A/CN.9/WG.III/WP.212 A/CN.9/WG.III/WP.212/Add.1
Standing multilateral mechanism: Selection and appointment of ISDS tribunal members and related matters	A/CN.9/WG.III/WP.213

11. 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 website.

⁵ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17* ([A/76/17](#)), para. 263.

⁶ *Ibid.*, *Seventy-seventh session, Supplement No. 17* ([A/77/17](#)), under preparation.

Item 5. Adoption of the report

12. The Commission, at its fifty-fifth session, decided that Working Group III could use the last meeting of its sessions for substantive deliberations, rather than for the adoption of the report, and continue the practice of adopting the report by a written procedure. Accordingly, the chairperson and the rapporteur will prepare a summary reflecting the deliberations and any conclusions reached during the session, which would be circulated during or after the session for comments by delegations. Based on the comments received, a revised summary would be prepared and circulated for adoption by the Working Group as its report for submission to the fifty-sixth session of the Commission, scheduled to be held in Vienna, tentatively from 3 to 15 July 2023. In case there are objections, it will be presented as the summary of the chairperson and the rapporteur for consideration and action by the Commission as it deems appropriate or may be adopted by the Working Group as its report at the following session.⁷

⁷ Ibid.