



General Assembly

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**United Nations Commission on
International Trade Law
Working Group III (Investor-State Dispute
Settlement Reform)
Thirty-eighth session
Vienna, 14–18 October 2019**

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-eighth session of the Working Group will be held at the Vienna International Centre, from 14 to 18 October 2019. Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2 to 5 p.m., except on Monday, 14 October 2019, when the session will be opened at 10 a.m.

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, the Commission had before it notes by the Secretariat on Possible future work in the field of dispute settlement: Concurrent proceedings in international arbitration ([A/CN.9/915](#)); on Possible future work in the field of dispute settlement: Ethics in international arbitration ([A/CN.9/916](#)); and on Possible future work in the field of dispute settlement: Reforms of investor-State dispute settlement (ISDS) ([A/CN.9/917](#)). Also, before it was a compilation of comments by States and international organizations on the Investor-State Dispute Settlement Framework ([A/CN.9/918](#) and addenda).

6. Having considered the topics in documents [A/CN.9/915](#), [A/CN.9/916](#) and [A/CN.9/917](#), the Commission entrusted Working Group III with a broad mandate to work on the possible reform of ISDS. In line with the UNCITRAL process, Working Group III 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

7. At its thirty-fourth session, the Working Group commenced work on consideration of ISDS reform and it continued its deliberations from its thirty-fifth to thirty-seventh sessions. 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](#) and its Addendum, [A/CN.9/935](#), [A/CN.9/964](#) and [A/CN.9/970](#), respectively. At those sessions, the Working Group identified and discussed concerns regarding ISDS and considered that reform was desirable in light of the identified concerns. At its thirty-seventh session, the Working Group agreed that it would discuss, elaborate and develop multiple potential reform solutions simultaneously ([A/CN.9/970](#), para. 81).

8. At its fifty-first session, in 2018, the Commission noted that the Working Group would continue its deliberations pursuant to the mandate given to it, allowing

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

sufficient time for all States to express their views, but without unnecessary delay.² At its fifty-second session, in 2019, it 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

9. The Commission further expressed its appreciation for the contributions to the UNCITRAL trust fund from the European Union, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), 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 inter-sessional 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 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

(b) Documentation

10. At its thirty-eighth session, the Working Group is expected to continue its consideration of ISDS reform based on the following documents:

- Document [A/CN.9/WG.III/WP.166](#), which sets out reform options;
- Document [A/CN.9/WG.III/WP.167](#), on a code of conduct;
- Document [A/CN.9/WG.III/WP.168](#), on the establishment of an advisory centre;
- Document [A/CN.9/WG.III/WP.169](#), on the selection and appointment of adjudicators;
- Document [A/CN.9/WG.III/WP.170](#), on reflective loss;
- Document [A/CN.9/WG.III/WP.172](#), on third party funding
- Submissions by States:
 - [A/CN.9/WG.III/WP.156](#) – Submission from the Government of Indonesia (9 November 2018)
 - [A/CN.9/WG.III/WP.159](#) and Add.1 – Submission from the European Union and its Member States (24 January 2019)
 - [A/CN.9/WG.III/WP.161](#) – Submission from the Government of Morocco (4 March 2019)
 - [A/CN.9/WG.III/WP.162](#) – Submission from the Government of Thailand (8 March 2019)
 - [A/CN.9/WG.III/WP.163](#) – Submission from the Governments of Chile, Israel and Japan (15 March 2019)
 - [A/CN.9/WG.III/WP.164](#) – Submission from the Government of Costa Rica (22 March 2019)
 - [A/CN.9/WG.III/WP.171](#) – Submission from the Government of Brazil (11 June 2019)
 - [A/CN.9/WG.III/WP.173](#) – Submission from the Government of Colombia (14 June 2019)

² Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 145.

³ Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 171.

⁴ Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 142–144 and 146 and *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 161–171.

- [A/CN.9/WG.III/WP.174](#) – Submission from the Government of Turkey (11 July 2019)
- [A/CN.9/WG.III/WP.175](#) – Submission from the Government of Ecuador (17 July 2019)
- [A/CN.9/WG.III/WP.176](#) – Submission from the Government of South Africa (17 July 2019)
- [A/CN.9/WG.III/WP.177](#) – Submission from the Government of China (18 July 2019)

11. Should further submissions be received from States, they will be made available on the UNCITRAL webpage for Working Group III (http://www.uncitral.org/uncitral/en/commission/working_groups/3Investor_State.html). The Working Group may also wish to note available information and submissions from international organizations, available at: https://uncitral.un.org/en/library/online_resources/investor-state_dispute.

12. A limited number of the following background documents will be made available at the session:

- 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 Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fourth session ([A/CN.9/930/Rev.1](#) and its addendum); thirty-fifth session ([A/CN.9/935](#)); thirty-sixth session ([A/CN.9/964](#)); and thirty-seventh session ([A/CN.9/970](#)).

13. UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) 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's page in the "Working Groups" section of the UNCITRAL website.

Item 5. Adoption of the report

14. The Working Group may wish to adopt, at the close of its session, a report for submission to the fifty-third session of the Commission, scheduled to be held in New York, from 6 to 17 July 2020. The main conclusions reached by the Working Group at its ninth meeting (on Friday morning) will be summarily read out for the record at the tenth meeting (on Friday afternoon) and subsequently incorporated into the report.

IV. Scheduling of meetings

15. The thirty-eighth session of the Working Group will last for five working days. There will be ten half-day meetings available for consideration of the agenda items. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,⁵ the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with a draft report on the entire period being prepared by the

⁵ Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum ([A/56/17](#) and Corr.3), para. 381.

Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).

16. The Working Group may wish to note the decision of the Commission at its fifty-second session that the Working Group would meet for an additional session in January or February 2020 in Vienna (thirty-ninth session of the Working Group), and that it requested the Secretariat to organize it within the existing resources with the understanding that this could be achieved if the timelines for the submission and processing of documentation, as well as the dates of the meeting were determined in consultation between the UNCITRAL secretariat and the Department for General Assembly and Conference Management.⁶ Information about the date of the thirty-ninth session of the Working Group will be posted in due course on the website of UNCITRAL.

17. The Working Group may wish to note that its fortieth session is scheduled to be held in New York, from 30 March to 3 April 2020 and its forty-first session in Vienna from 5 to 9 October 2020.

⁶ Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 232.