



# General Assembly

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## United Nations Commission on International Trade Law Working Group III (Investor-State Dispute Settlement Reform)

Forty-second session

New York, online, 14–18 February 2022

### Annotated provisional agenda

#### I. Provisional agenda

1. Opening of the session.
2. Adoption of the agenda.
3. Possible reform of investor-State dispute settlement (ISDS).

#### 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.

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\* Reissued for technical reasons on 4 January 2022.



### III. Annotations to agenda items

#### Item 1. Opening of the session

3. The forty-second session of the Working Group will be held from 14–18 February 2022 at the United Nations Headquarters, New York, with the arrangements put in place to allow both in-person and online participation. Meeting hours and other arrangements for the session will be announced on the web page of Working Group III.

#### Item 3. Possible reform of investor-State dispute settlement (ISDS)

##### (a) Previous deliberations

4. 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).<sup>1</sup>

5. From its thirty-fourth to thirty-seventh sessions, the Working Group identified and discussed concerns regarding ISDS and considered that reform was desirable in light of the identified concerns.<sup>2</sup>

6. From its thirty-eighth to fortieth sessions, the Working Group considered concrete reform options related to (i) the establishment of an advisory centre; (ii) a code of conduct for adjudicators; (iii) the regulation of third-party funding; (iv) dispute prevention and mitigation and means of alternative dispute resolution; (v) treaty interpretation by States parties; (vi) security for costs; (vii) means to address frivolous claims; (viii) multiple proceedings and counterclaims; (ix) reflective loss and shareholder claims; (x) appellate and multilateral court mechanisms; and (xi) the selection and appointment of ISDS tribunal members; and (xii) a multilateral instrument on ISDS reform.<sup>3</sup>

7. At its resumed fortieth session in May 2021, the Working Group considered a workplan to implement ISDS reform and resource requirements.<sup>4</sup>

8. At its fifty-fourth session in 2021, the Commission expressed its satisfaction with the progress made by the Working Group through a constructive, inclusive and transparent process.<sup>5</sup>

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

<sup>2</sup> 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.

<sup>3</sup> The deliberations and decisions of the Working Group at its thirty-eighth to fortieth sessions are set out in documents [A/CN.9/1004\\*](#), [A/CN.9/1004/Add.1](#), [A/CN.9/1044](#) and [A/CN.9/1050](#).

<sup>4</sup> The Work Plan considered by the Working Group has been included in an Annex to document [A/CN.9/1054](#).

<sup>5</sup> *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17 (A/76/17)*, para. 204.

9. At its forty-first session, the Working Group commenced a first reading of the draft code of conduct for adjudicators in international investment disputes.<sup>6</sup>

**(b) Documentation**

10. At its forty-second session, the Working Group is expected to consider topics on ISDS reform, including the multilateral advisory centre, the standing multilateral mechanism (selection and appointment of ISDS tribunal members and related matters) and the draft code of conduct for adjudicators in international investment disputes. The topics to be considered at the session will be specified in a letter by the Chair in advance of the session taking into account the available conference time. The consideration of these topics would be based on the following documents prepared by the Secretariat, which can be downloaded from the on the web page of Working Group III (background documents are no longer available at Working Group sessions in printed form):

- [A/CN.9/WG.III/WP.208](#) on draft code of conduct for adjudicators in international investment disputes;
- [A/CN.9/WG.III/WP.209](#) on means of implementation of the code of conduct for adjudicators in international investment disputes;
- [A/CN.9/WG.III/WP.212](#) and [A/CN.9/WG.III/WP.212/Add.1](#) on the multilateral advisory centre;
- [A/CN.9/WG.III/WP.213](#) on the standing multilateral mechanism: Selection and appointment of ISDS tribunal members and related matters.

11. 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)*); fifty-second session (*Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*); fifty-third session (*Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*); and fifty-fourth session (*Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17 (A/76/17)*).
- 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\\*](#)); resumed thirty-eighth session ([A/CN.9/1004/Add.1](#)); thirty-ninth session ([A/CN.9/1044](#)); fortieth session ([A/CN.9/1050](#)); resumed fortieth session ([A/CN.9/1054](#)) and forty-first session ([A/CN.9/1086](#), under preparation).
- Note by the Secretariat on the reform elements ([A/CN.9/WG.III/WP.166](#) and its [addendum](#)).

12. 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 web page of Working Group III.

<sup>6</sup> See document [A/CN.9/1086](#), under preparation.