



General Assembly

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**United Nations Commission
on International Trade Law**
Working Group II (Arbitration and Conciliation)
Fifty-ninth session
Vienna, 16-20 September 2013

Annotated provisional agenda

I. Provisional agenda

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2. Election of officers.
3. Adoption of the agenda.
4. Preparation of a convention on transparency in treaty-based investor-State arbitration.
5. Organization of future work.
6. Other business.
7. 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 (2016), Argentina (2016), Armenia (2019), Australia (2016), Austria (2016), Belarus (2016), Botswana (2016), Brazil (2016), Bulgaria (2019), Cameroon (2019), Canada (2019), China (2019), Colombia (2016), Côte d'Ivoire (2019), Croatia (2016), Denmark (2019), Ecuador (2019), El Salvador (2019), Fiji (2016), France (2019), Gabon (2016), Georgia (2015), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2016), Indonesia (2019), Iran (Islamic Republic of) (2016), Israel (2016), Italy (2016), Japan (2019), Jordan (2016), Kenya (2016), Kuwait (2019), Liberia (2019), Malaysia (2019), Mauritania (2019), Mauritius (2016), Mexico (2019), Namibia (2019), Nigeria (2016), Pakistan (2016), Panama (2019), Paraguay (2016), Philippines (2016), Republic of Korea (2019), Russian Federation (2019), Sierra Leone (2019),



Singapore (2019), Spain (2016), Switzerland (2019), Thailand (2016), Turkey (2016), Uganda (2016), Ukraine (2014), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2016), Venezuela (Bolivarian Republic of) (2016) and Zambia (2019).

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 fifty-ninth session of the Working Group will be held at the Vienna International Centre, Vienna, from 16 to 20 September 2013. Meeting hours will be from 9:30 a.m. to 12:30 p.m. and from 2 to 5 p.m., except on Monday, 16 September 2013, 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. Preparation of a convention on transparency in treaty-based investor-State arbitration

(a) Previous deliberations

5. At its forty-third session (New York, 21 June-9 July 2010), the Commission adopted the UNCITRAL Arbitration Rules (as revised in 2010).¹ At that session, with respect to future work in the field of settlement of commercial disputes, the Commission recalled the decision made at its forty-first session (New York, 16 June-3 July 2008) that the topic of transparency in treaty-based investor-State arbitration should be dealt with as a matter of priority immediately after completion of the current revision of the UNCITRAL Arbitration Rules. The Commission entrusted its Working Group II (Arbitration and Conciliation) with the task of preparing a legal standard on that topic.² At its forty-fourth session (Vienna, 27 June-8 July 2011), the Commission reiterated its commitment expressed at its forty-first session regarding the importance of ensuring transparency in treaty-based investor-State arbitration and confirmed that the question of applicability of the legal standard on transparency to existing investment treaties was part of the

¹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 187.

² *Ibid.*, para. 190.

mandate of the Working Group and a question with great practical interest, taking account of the high number of such treaties already concluded.³

6. The Working Group started its consideration of the matter at its fifty-third session (Vienna, 4-8 October 2010), and agreed that the legal standard on transparency would take the form of rules on transparency in treaty-based investor-State arbitration.⁴ The Working Group completed its work on the preparation of rules on transparency in treaty-based investor-State arbitration at its fifty-eighth session (New York, 4-8 February 2013).

7. At its forty-sixth session (Vienna, 8-26 July 2013), the Commission adopted the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, together with the UNCITRAL Arbitration Rules (with new article 1, paragraph 4, as adopted in 2013).⁵ At that session, the Commission recorded consensus to entrust the Working Group with the task of preparing a convention on the application of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration to existing treaties, taking into account that the aim of the convention was to give those States that wished to make the rules on transparency applicable to their existing treaties an efficient mechanism to do so, without creating any expectation that other States would use the mechanism offered by the convention.⁶

8. At its fifty-ninth session, the Working Group is expected to commence its consideration of a draft convention, on the basis of notes prepared by the Secretariat (A/CN.9/784 and A/CN.9/WG.II/WP.179).

(b) Documentation

9. The Working Group will have before it notes by the Secretariat regarding the preparation of a convention on the application of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration to existing treaties (A/CN.9/784 and A/CN.9/WG.II/WP.179). A limited number of the following background documents will be made available at the session:

- UNCITRAL Arbitration Rules (1976);
- UNCITRAL Arbitration Rules (as revised in 2010);
- UNCITRAL Notes on Organizing Arbitral Proceedings;
- UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006);
- Reports of the United Nations Commission on International Trade Law on the work of its forty-first session (*Official Records of the General Assembly*,

³ *Official Records of the General Assembly*, Sixty-sixth Session, Supplement No. 17 (A/66/17), paras. 200-202.

⁴ At its fifty-third (A/CN.9/712) and fifty-fourth (A/CN.9/717) sessions, the Working Group considered the matters of form, applicability and content of a legal standard on transparency in treaty-based investor-State arbitration; at its fifty-fifth (A/CN.9/736), fifty-sixth (A/CN.9/741), fifty-seventh (A/CN.9/760) and fifty-eighth (A/CN.9/765) sessions, the Working Group considered, and completed its readings of, the draft rules on transparency in treaty-based investor-State arbitration.

⁵ Report of the Commission on the work of its forty-sixth session, under preparation, Annex 1.

⁶ Report of the Commission on the work of its forty-sixth session, under preparation.

Sixty-third Session, Supplement No. 17 (A/63/17)); forty-second session (*Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17 (A/64/17)*); forty-third session (*Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*); forty-fourth session (*Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17)*); forty-fifth session (*Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17 (A/67/17)*); and forty-sixth session (report under preparation);

- Report of Working Group II (Arbitration and Conciliation) on the work of its forty-eighth (A/CN.9/646); fifty-third (A/CN.9/712); fifty-fourth (A/CN.9/717); fifty-fifth (A/CN.9/736); fifty-sixth (A/CN.9/741); fifty-seventh (A/CN.9/760); and fifty-eighth (A/CN.9/765) sessions;
- Settlement of commercial disputes, transparency in treaty-based investor-State arbitration, notes by the Secretariat: A/CN.9/WG.II/WP.162; A/CN.9/WG.II/WP.166/Add.1; A/CN.9/WG.II/WP.169/Add.1; A/CN.9/WG.II/WP.176/Add.1.

10. 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. Organization of future work

11. At its fifty-ninth session, the Working Group may wish to consider organization of its work in respect of the matters which were mentioned by the Commission at its thirty-ninth,⁷ forty-fourth,⁸ and forty-sixth⁹ sessions as matters for future work of the Working Group.

12. In its deliberations on future work, the Working Group may wish to note that, at its forty-sixth session, the Commission agreed that the Notes on Organizing Arbitral Proceedings (1996) required updating as a matter of priority. It was agreed that the preferred forum for that work would be that of a Working Group to ensure that the universal acceptability of those Notes would be preserved. It was recommended that a single session of the Working Group should be devoted to consideration of the Notes and that such consideration should take place as the next topic of future work, after completion of the draft convention.¹⁰

Item 7. Adoption of the report

13. The Working Group may wish to adopt, at the close of its session, a report for submission to the forty-seventh session of the Commission, scheduled to be held in New York, from 7 to 25 July 2014. The main conclusions reached by the Working

⁷ *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17 (A/61/17)*, paras. 182-187.

⁸ *Ibid.*, *Sixty-sixth Session, Supplement No. 17 (A/66/17)*, paras. 203-207.

⁹ *Ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, para. 70.

¹⁰ Report of the Commission on the work of its forty-sixth session, under preparation.

Group at its ninth meeting (on Friday morning) will be summarily read out for the record at the tenth meeting and subsequently incorporated into the report.

IV. Scheduling of meetings

14. The fifty-ninth 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,¹¹ 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 Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).

15. The Working Group may wish to note that its sixtieth session is scheduled to be held in New York, from 3 to 7 February 2014.

¹¹ *Ibid.*, *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), para. 381.