



United Nations
Commission on International Trade Law

UNCITRAL Code of Conduct

ROYAUME DU MAROC



MINISTRE DE LA JUSTICE



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Investor-State Dispute Settlement

In 2013, UNCITRAL amended the Arbitration Rules to incorporate the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, application of which is promoted by United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (New York, 2014) or the Mauritius Convention on Transparency. In 2017, the Mauritius Convention on Transparency entered into force. The Convention provides an efficient mechanism to supplement existing investment treaties (concluded prior to April 2014) with respect to transparency related obligations.

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). Instruments resulting from that work, as adopted by the Commission, are presented on this page.

Conventions

- [United Nations Convention on Transparency in Treaty-based Investor-State Arbitration \(New York, 2014\) \(the "Mauritius Convention on Transparency"\)](#)
- [Statute of the Advisory Centre on International Investment Dispute Resolution \(adopted in principle in 2024\)](#) 

Model Provisions

- [UNCITRAL Model Provisions on Mediation for International Investment Disputes \(2023\)](#) 

Codes of conduct


- [UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution and commentary \(2023\)](#) 
- [UNCITRAL Code of Conduct for Judges in International Investment Dispute Resolution and commentary \(adopted in principle in 2023\)](#) 



Contractual texts

- [UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration \(effective date: 1 April 2014\)](#)
- [UNCITRAL Arbitration Rules](#)

Explanatory texts

- [UNCITRAL Guidelines on Mediation for International Investment Disputes \(2023\)](#) 

Additional Resources

- Working Groups
 - [Working Group II: Arbitration and Conciliation / Dispute Settlement](#)
 - [Working Group III: Investor-State Dispute Settlement Reform](#)

<https://uncitral.un.org/en/texts/isds>

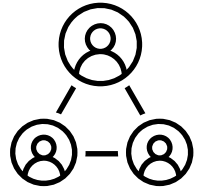


**UNCITRAL Code of Conduct for Arbitrators in International
Investment Dispute Resolution (adopted in July 2023)**

**UNCITRAL Code of Conduct for Judges in International Investment
Dispute Resolution (adopted in principle in July 2023)**



Why a code of conduct?



- **A code of conduct as a crucial reform element of ISDS to address identified concerns:**
 - Perceived or apparent lack of independence and impartiality of some adjudicators
 - Issues of conflicts of interest among arbitrators
 - ISDS under increased public scrutiny given public interest
 - Need to restore trust and legitimacy of the ISDS system



- **Key features:**
 - Rules on independence and impartiality
 - Limitation on multiple roles
 - Ex parte communication
 - Robust disclosure requirements
 - Rules on confidentiality, integrity, diligence...
 - Commentary



Background and methods of work



- Comparative review of standards in investment treaties, arbitration rules applicable to ISDS, and codes of conduct of international courts
- Consideration of preliminary drafts by the Working Group and reflection of comments
- Informal consultations and side events
- Revised drafts for consideration by the Working Group



Overview of the content

Definitions

Art. 1

Application of the Code

Art. 2

Independence and impartiality

Art. 3

Limit on multiple roles

Art. 4

Duty of diligence

Art. 5

Integrity and competence

Art. 6

Art. 7

Ex parte communication

Art. 8

Confidentiality

Art. 9

Fees and expenses

Art. 10

Assistant

Art. 11

Disclosure obligations

Art. 12

Compliance with the Code

**Annexes: disclosure
and declaration forms**



Code for arbitrators (adopted): main provisions

Article 2: Application of the Code

Possible application in non-IIDs by agreement of parties | Complements provisions in the instrument of consent

Article 4: Limit on multiple roles

Concurrent ban as counsel or expert witness if same measures, parties or provisions of same IoC | Time-barred for former arbitrators | Party autonomy

Article 8: Confidentiality

Prohibition to disclose or comment but exceptions

Article 11: Disclosure obligations

Robust disclosure: “any circumstances likely to give rise to justifiable doubts” + mandatory list



Article 3: Independence & impartiality

Principle | Non-exhaustive list of obligations and prohibitions, supplemented by examples in Commentary

Article 7: Ex parte communication

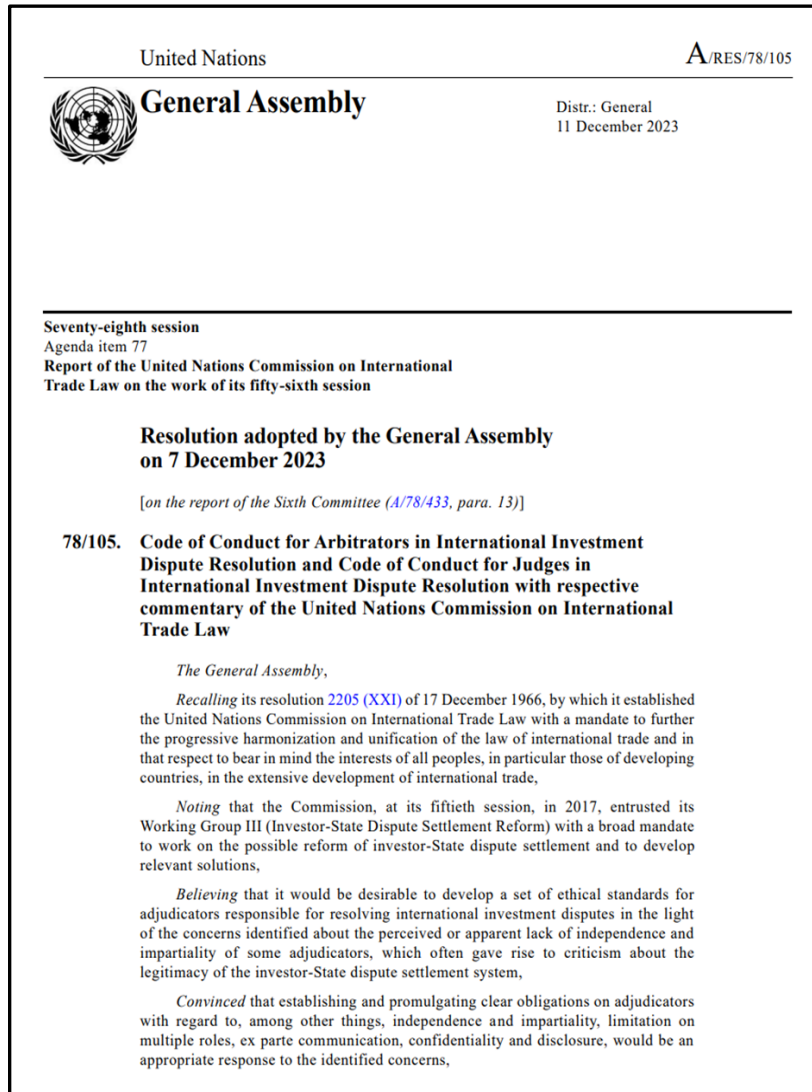
Prohibited in principle but exceptions

Article 10: Assistant

Ensure that the assistant acts in accordance with the Code | Arbitrator’s responsibility



Use and implementation



- Code published and available online <https://uncitral.un.org/en/texts/isds>
- **General Assembly Resolution 78/105: Recommends the use** of the Code by all relevant stakeholders, including to make reference to the Code for those involved in the negotiation of international instruments and domestic legislation governing foreign investments
- Code as **“soft law” instrument**, pending its incorporation into a binding framework, such as a protocol of a multilateral instrument on ISDS Reform applicable to existing and future treaties
- As a “soft law” instrument, Code to be voluntarily applied and referred to by disputing parties e.g. in procedural orders and terms of appointment
- The Code offers flexibility and accommodates party autonomy



Code for judges (adopted in principle)

Structure and provisions similar to code of conduct for arbitrators with adjustments



- ❑ Result of discussions on a joint code for “adjudicators”
- ❑ Applies only to members (or candidates) of a standing mechanism
- ❑ Ban on multiple roles as counsel or expert witness in any other proceeding | possibility as arbitrator = future rules of standing mechanism | limit for former judges

What adoption “in principle” means



- ❑ Text adopted pending necessary adjustments once/if the standing mechanism is established
- ❑ No reconsideration of agreed points during that process

Next steps



- ❑ Expected endorsement and recommendation by the Sixth Committee in December 2023
- ❑ Further discussions in WGIII on a standing mechanism scheduled for 2024
- ❑ Inclusion of the Code as part of the multilateral instrument for ISDS Reform or the Rules of the standing mechanism





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Thank you for your attention!

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