



# General Assembly

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**United Nations Commission on  
International Trade Law  
Working Group III (Investor-State Dispute  
Settlement Reform)  
Thirty-eighth session (*resumed*)  
Vienna, 20–24 January 2020**

## 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 resumed thirty-eighth session of the Working Group will be held at the Vienna International Centre, from 20 to 24 January 2020. Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2 to 5 p.m., except on Monday, 20 January 2020, 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, in 2017, 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).<sup>1</sup>

7. 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.<sup>2</sup>

8. At its fifty-second session, in 2019, the Commission 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

<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.

develop multiple potential reform solutions simultaneously. The Commission also expressed its appreciation for the support provided by the Secretariat.<sup>3</sup>

9. The Commission further expressed its appreciation for the contributions to the UNCITRAL trust fund from the European Union, the German Federal Ministry for Economic Cooperation and Development (BMZ), 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 intersessional 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.<sup>4</sup>

10. At its thirty-eighth session (Vienna, 14-18 October 2019), the Working Group agreed on a project schedule to discuss, elaborate and develop multiple potential reform solutions simultaneously and commenced its consideration of reform options.<sup>5</sup>

## (b) Documentation

11. At its resumed 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.169](#), on the selection and appointment of ISDS tribunal members; and
- Document [A/CN.9/WG.III/WP.185](#), on review, appellate and multilateral court mechanisms; and
- Submissions from Governments: Submission from the Government of Indonesia ([A/CN.9/WG.III/WP.156](#)); Submission from the European Union and its member States ([A/CN.9/WG.III/WP.159](#) and [Add.1](#)); Submission from the Government of Morocco ([A/CN.9/WG.III/WP.161](#)); Submission from the Government of Thailand ([A/CN.9/WG.III/WP.162](#)); Submission from the Governments of Chile, Israel and Japan ([A/CN.9/WG.III/WP.163](#)); Submissions from the Government of Costa Rica ([A/CN.9/WG.III/WP.164](#) and [A/CN.9/WG.III/WP.178](#)); Submission from the Government of Brazil ([A/CN.9/WG.III/WP.171](#)); Submission from the Government of Colombia ([A/CN.9/WG.III/WP.173](#)); Submission from the Government of Turkey ([A/CN.9/WG.III/WP.174](#)); Submission from the Government of Ecuador ([A/CN.9/WG.III/WP.175](#)); Submission from the Government of South Africa ([A/CN.9/WG.III/WP.176](#)); Submission from the Government of China ([A/CN.9/WG.III/WP.177](#)); Submission from the Government of the Republic of Korea ([A/CN.9/WG.III/WP.179](#)); Submission from the Government of Bahrain ([A/CN.9/WG.III/WP.180](#)); Submission from the Government of Mali ([A/CN.9/WG.III/WP.181](#)); Submission from the Governments of Chile, Israel, Japan, Mexico and Peru ([A/CN.9/WG.III/WP.182](#)); Submission from the Government of Kazakhstan ([A/CN.9/WG.III/WP.187](#)); and Submission from the Government of Kuwait ([A/CN.9/WG.III/WP.188](#)).

12. Further submissions received from States will be made available on the UNCITRAL web page for Working Group III ([www.uncitral.org/uncitral/en/commission/working\\_groups/3Investor\\_State.html](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](https://uncitral.un.org/en/library/online_resources/investor-state_dispute).

<sup>3</sup> *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 169.

<sup>4</sup> *Ibid.*, paras. 165 and 166.

<sup>5</sup> The deliberations and decisions of the Working Group at its thirty-eighth session are set out in document A/CN.9/1004.

13. 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](#)); thirty-seventh session ([A/CN.9/970](#)); and thirty-eighth session ([A/CN.9/1004](#));
- Note by the Secretariat on the reform options ([A/CN.9/WG.III/WP.166](#) and its addendum).

14. UNCITRAL documents are posted on the UNCITRAL website ([www.uncitral.org](http://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**

15. 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**

16. The resumed 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,<sup>6</sup> 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).

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

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<sup>6</sup> *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum ([A/56/17](#) and Corr.3), para. 381.