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UNCITRAL Working Group III (ISDS reform)

Status of work

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1. Notes by the Secretariat for discussion
2. Initial drafts for comments
3. Initial drafts in preparation
4. Upcoming events
5. Resource requirements and workplan
6. Excerpts of the workplan: Years 2021 and 2022

1 Notes by Secretariat for discussion



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41st Working Group Session

15-19 November 2021, Vienna

- A/CN.9/WG.III/WP.208 - Investor-State dispute settlement (ISDS) reform – Draft code of conduct: Means of implementation and enforcement
- A/CN.9/WG.III/WP.209 - Possible reform of investor-State dispute settlement (ISDS) – Draft Code of Conduct

First Reading

2 Initial Drafts for comments

Assessment of damages and compensation

- Initial draft for comments until 15 November 2021

Mediation and other forms of alternative dispute resolution (ADR)

- Initial draft (2 documents) for comments until 31 December 2021

Standing multilateral mechanism: Selection and appointment of ISDS tribunal members and related matters

- Initial draft for comments until 15 November 2021

3 List of initial drafts in preparation

* Expected release dates will be added in due course

Appellate mechanism

Cost of establishing a permanent body

Dispute prevention and mitigation

Enforcement of decisions by a court or appellate body

Procedural rules reform and cross-cutting issues

Selection and appointment of arbitrators

- Existing paper on the selection and appointment of ISDS tribunal members, to be updated as needed

Treaty interpretation

4 Upcoming events

Date	Topic	Format
28-29 October 2021	ADR mechanism (Mediation)	Intersessional meeting hosted by Hong Kong/China
15-19 November 2021	First Reading: Draft Code of Conduct	41st Working Group Session, Vienna
6-10 December 2021	Five two-hour informal meetings: <ul style="list-style-type: none"> • Mediation - Dispute prevention and mitigation (1 meeting) • Financing aspects of a multilateral permanent investment tribunal (1 meeting) • Shareholders claims for reflective loss (1 meeting organized jointly with the OECD) • Multilateral instrument on ISDS reform (2 meetings) 	Informal Meeting
To be scheduled (7 days)	Draft code of conduct (2 days); Procedural Rules Reform (1 day); Multilateral permanent investment court (1 day), Cross cutting issues and damages (2 days), ADR mechanisms and dispute prevention (1 day)	Informal Meeting
14-18 February 2022	Instructions on Multilateral Advisory Centre (1 day); First Reading on Multilateral Permanent Investment Court (3 days)	42st Working Group Session, New York

5 Resource requirements and workplan



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Request for additional resources (A/CN.9/1063)

- Considered by the Commission at its 54th session
- One additional week of working group session from 2022-2025 and secretariat resources
- Taking reference from the Report on the work at the resumed 40th session of the Working Group (A/CN.9/1054)

Revised workplan (A/CN.9/1054)

- Notional schedule (that can be adapted as progress is made) for formal and informal meetings on reform options, including cross-cutting issues and the topic of damages
- Consideration of reform options by the Commission on a rolling basis
- The workplan has been extended to the Commission session in 2026

6 Excerpt of the workplan - 2021



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	ADR Mechanisms and Dispute Prevention	Selection and Appointment of Arbitrators	Code of Conduct	ISDS Procedural Rules Reforms	Multilateral Advisory Centre	Appellate Mechanism	Multilateral Permanent Investment Court	Multilateral Instrument to Implement Reforms
2021	Inter-Sessional #40	Inter-Sessional Meeting - HK China (2 days)	Other Meetings w ICSID (2 day) / Drafting Group (2 days)	Other Meetings (2 days)/ Inter-Sessional Meeting – Republic of Korea (2 days)	Other Meetings (3 days)		Other Meetings (2 days)	
	Commission #54 - Decision on Resource Request							
	Working Group #41			First Reading (4 days)				
	Inter-Sessional #41	Other Meetings (2 days)			Other Meetings on Cross-Cutting Issues and Damages (3 days)			Drafting Group (2 days)

7 Excerpt of the workplan - 2022



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	ADR Mechanisms and Dispute Prevention	Selection and Appointment of Arbitrators	Code of Conduct	ISDS Procedural Rules Reforms	Multilateral Advisory Centre	Appellate Mechanism	Multilateral Permanent Investment Court	Multilateral Instrument to Implement Reforms
2022	Working Group #42				Instructions (1 day)		First Reading (3 days)	
	Inter-Sessional #42		Other Meetings (1 day)			Inter-Sessional Meeting (2 days)	Inter-Sessional Meeting (2 days)	Other Meetings (1 day)
		Commission #55 – Consideration of the Code of Conduct						
	Working Group #43	Instructions (1 day)			Instructions on Cross-Cutting Issues and Damages (3 days)			
	Inter-Sessional #43					Drafting Group (2 days)	Drafting Group (2 days)	
	Working Group #44						First Reading (3 days)	Instructions (1 day)
	Inter-Sessional #44	Drafting Group (2 days)				Drafting Group (2 days)	Other Meetings (2 days)	