



General Assembly

Distr.: Limited
30 January 2023

Original: English

**United Nations Commission on
International Trade Law
Working Group III (Investor-State Dispute
Settlement Reform)
Forty-fifth session
New York, 27-31 March 2023**

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: Afghanistan (2028), Algeria (2025), Argentina (2028), Armenia (2028), Australia (2028), Austria (2028), Belarus (2028), Belgium (2025), Brazil (2028), Bulgaria (2028), Cameroon (2025), Canada (2025), Chile (2028), China (2025), Colombia (2028), Côte d'Ivoire (2025), Croatia (2025), Czechia (2028), Democratic Republic of the Congo (2028), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Greece (2028), Honduras (2025), Hungary (2025), India (2028), Indonesia (2025), Iran (Islamic Republic of) (2028), Iraq (2028), Israel (2028), Italy (2028), Japan (2025), Kenya (2028), Kuwait (2028), Malawi (2028), Malaysia (2025), Mali (2025), Mauritius (2028), Mexico (2025), Morocco (2028), Nigeria (2028), Panama (2028), Peru (2025), Poland (2028), Republic of Korea (2025), Russian Federation (2025), Saudi Arabia (2028), Singapore (2025), Somalia (2028), South Africa (2025), Spain (2028), Switzerland (2025), Thailand (2028), Türkiye (2028), Turkmenistan (2028), Uganda (2028), Ukraine (2025), United Kingdom of Great Britain and Northern Ireland (2025), United States of America (2028), Venezuela (Bolivarian Republic of) (2028), 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 forty-fifth session of the Working Group will be held in New York from 27 to 31 March 2023 at the United Nations Headquarters. Meeting hours will be from 10.00 a.m. to 1 p.m. and from 3 to 6 p.m., except on Monday, 27 March 2023, when the session will be opened at 10.30 a.m.

Item 2. Election of officers

4. In accordance with its practice, the Working Group may wish to elect a Chairperson and a Rapporteur.

Item 4. Possible reform of investor-State dispute settlement (ISDS)

5. 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).¹

6. At its fifty-fifth session in 2022, the Commission expressed its satisfaction with the progress made by the Working Group and the support provided by the Secretariat.² The Commission also heard an outline of the work to be conducted by the Working Group during the four weeks of session scheduled till the fifty-sixth session of the Commission in 2023. The Working Group was encouraged to submit to the Commission for its consideration a code of conduct with commentary and texts on alternative dispute resolution mechanisms.³

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.⁴ From its thirty-eighth to forty-fourth session, the Working Group considered concrete elements for ISDS reform.⁵

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

² *Ibid.*, *Seventy-seventh session, Supplement No. 17 (A/77/17)*, para. 186.

³ *Ibid.*, para. 194(c).

⁴ 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.

⁵ The deliberations and decisions of the Working Group at its thirty-eighth to forty-fourth sessions are set out in documents [A/CN.9/1004](#); [A/CN.9/1004/Add.1](#); [A/CN.9/1044](#); [A/CN.9/1050](#); [A/CN.9/1054](#); [A/CN.9/1086](#); [A/CN.9/1092](#); [A/CN.9/1124](#) and [A/CN.9/1130](#) (forthcoming).

8. At its thirty-ninth session in October 2020, the Working Group undertook a preliminary consideration of the topic of dispute prevention and mitigation based on document A/CN.9/WG.III/WP.190. The Working Group requested the Secretariat to collect and compile relevant and readily available information on the best practices, to examine how such best practices could be applied in a more consistent manner and to revert to the Working Group with a suggestion on possible means to implement these best practices (A/CN.9/1044, para. 26).

9. At its forty-third session in September 2022, the Working Group reiterated its support for promoting mediation as a means of resolving investment disputes (A/CN.9/1124, para. 145) based on the draft provisions on mediation (A/CN.9/WG.III/WP.217) and the draft guidelines on investment mediation (A/CN.9/WG.III/WP.218). The Secretariat was requested to revise the draft provisions based on the deliberations and to simplify their structure (A/CN.9/1124, para. 172). There was also wide support for the preparation of draft guidelines on investment mediation, which was found to be a useful educational and awareness-raising tool (A/CN.9/1124, para. 173).

10. At its forty-fourth session in January 2023, the Working Group considered the draft codes of conduct for arbitrators and judges in international investment dispute resolution as well as the accompanying commentary contained in document A/CN.9/WG.III/WP.223. The Secretariat was requested to prepare a revised version of the codes and the accompanying commentary based on the deliberations and decision and to present them to the Commission for consideration at its fifty-sixth session in 2023. With regard to the articles in the code of conduct for arbitrators relating to limits on multiple roles, it was agreed to continue the deliberations at the forty-fifth session (A/CN.9/1130, para. **, in preparation)

Reform elements and documentation

12. At its forty-fifth session, the Working Group is expected to continue its deliberations on the articles in the code of conduct for arbitrators relating to limits on multiple roles and on the topics of mediation and dispute prevention and mitigation.

13. The deliberations on the reform elements would be based on the following documents prepared by the Secretariat.

- A/CN.9/WG.III/WP.226 – Draft provisions on mediation
- A/CN.9/WG.III/WP.227 – Draft guidelines on investment mediation
- A/CN.9/WG.III/WP.228 – Draft legislative guide on investment dispute prevention and mitigation
- A/CN.9/1130 – Report of Working Group III on the work of its forty-fourth session (containing the proposed articles 3, 4 and 11 of the code of conduct for arbitrators)

14. The 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 Working Group III website.

Item 5. Other business

15. At its fifty-fifth session, the Commission entrusted Working Group II to develop a guidance text on early dismissal and preliminary determination and to present it to the Commission for consideration at its fifty-sixth session in 2023.⁶ During its seventy-sixth session in October 2022, Working Group II considered the topic on the basis of the document [A/CN.9/1114](#) and requested the Secretariat to prepare a revised version of the guidance text as an additional note in the UNCITRAL Notes on Organizing Arbitral Proceedings to be considered briefly by the Working Group before presenting it to the Commission (A/CN.9./1123, para. 40). At the time of

⁶ *Official Records of the General Assembly, Seventy-seventh session, Supplement No. 17 (A/77/17)*, paras. 22(c) and 229.

submission of this note, Working Group II is scheduled to consider the revised version of the guidance text (A/CN.9/WG.II/WP.230) at its seventy-seventh session in February 2023. While the guidance text is generic in nature and applicable to all types of arbitration, the Working Group may wish provide inputs to the Commission as it is preparing procedural rules on early dismissal in the context of ISDS reform (see Chapter II.A of document A/CN.9/WG.III/WP.219). Deliberations on this agenda item could be based on the following documents.

- A/CN.9/WG.II/WP.230 – Early dismissal and preliminary determination
- A/CN.9/1129 – Report of Working Group II on the work of its seventy-seventh session (forthcoming)

Item 6. Adoption of the report

16. The Commission, at its fifty-fifth session in 2021, decided that Working Group III could use the last meeting of its sessions for substantive deliberations, rather than for the adoption of the report, and continue the practice of adopting the report by a written procedure. Accordingly, the Chairperson and the Rapporteur will prepare a summary reflecting the deliberations and any conclusions reached during the session, which would be circulated during or after the session for comments by delegations. Based on the comments received, a revised summary would be prepared and circulated for adoption by the Working Group as its report for submission to the fifty-sixth session of the Commission, scheduled to be held in Vienna from 3 to 21 July 2023. In case there are objections, it will be presented as the summary of the Chairperson and the Rapporteur for consideration and action by the Commission as it deems appropriate or may be adopted by the Working Group as its report at the following session.⁷

⁷ *Ibid.*, para. 236.