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**Resources to implement the work programme with respect
to investor-State dispute settlement (ISDS) reform**

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I. Introduction

1. This note has been prepared by the Secretariat to provide the Commission with information on the resources required to implement the work programme of the Commission with respect to investor-State dispute settlement (ISDS) reform (referred to as the “ISDS Project” in this note). Accordingly, it complements the note by the Secretariat on the work programme of the Commission (A/CN.9/1016) and supplements information provided to Working Group III on options for implementing a work plan (A/CN.9/WG.III/WP.158).
2. Due to the global outbreak of COVID-19, the thirty-ninth session of Working Group III (New York, 30 March - 3 April 2020) could not take place as scheduled. At that session, the Working Group was scheduled to consider among others, how to plan its future work and given the workload, whether to request additional session time to the Commission.¹
3. To assist the Commission in considering its overall work programme, this note provides information on the progress made by Working Group III since 2017, its expected workload, and the anticipated time frame for completing the ISDS Project under the current circumstances. Based on an assumption that the Commission may wish to complete the ISDS Project within a shorter time period, it also provides an estimate of additional conference resources that may be required in different scenarios. The note further provides an overview of the programme budget implication that a request for additional conference resources could have to assist the Commission in reaching an informed decision.

II. Progress made by Working Group III and resources utilized since 2017

4. The Commission may recall that at its fiftieth session, in 2017, it had entrusted Working Group III with a broad mandate to work on the possible reform of ISDS. It was agreed that the Working Group would proceed to: (a) first, identify and consider concerns regarding ISDS; (b) second, consider whether reform was desirable in light of any identified concerns; and (c) 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 solution 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).²
5. From its thirty-fourth to thirty-seventh sessions, the Working Group identified and discussed concerns regarding ISDS, and further considered that reform was desirable in light of the identified concerns.³
6. 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 develop multiple potential reform solutions simultaneously.⁴
7. 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 the reform

¹ Report of Working Group III on the work of its thirty-eighth session (A/CN.9/1004), paras. 25 and 27. See also the report of Working Group on the work of its thirty-seventh session (A/CN.9/970), para. 49.

² *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), para. 264.

³ 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.

⁴ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17* (A/74/17), para. 169.

options.⁵ At that session, the Working Group considered the establishment of an advisory centre, the preparation of a code of conduct and the regulation of third-party funding.⁶ At its resumed thirty-eighth session (Vienna, 20–24 January 2020), the Working Group considered an appellate mechanism as well as a standing multilateral body, including the issue of enforcement, financing of a permanent body as well as the selection and appointment of ISDS tribunal members.⁷

8. At the thirty-ninth session of the Working Group, which could not take place as scheduled, the following reform options were planned to be discussed: (i) dispute prevention and mitigation as well as other means of alternative dispute resolution; (ii) treaty interpretation by States parties; (iii) security for costs; (iv) means to address frivolous claims; (v) multiple proceedings including counterclaims; (vi) reflective loss and shareholder claims; and (vii) multilateral instrument on ISDS reform.⁸

9. Table 1 provides an overview of the conference⁹ and document¹⁰ resources utilized by the Working Group since 2017. It includes the working papers and submissions prepared for the thirty-ninth session. The table indicates that the third phase of the ISDS Project, where multiple reform solutions are expected to be developed simultaneously, may require more resources per session compared to the first and second phases.

<Table 1: Overview of resources utilized by Working Group III>¹¹

	Conference resources	Notes by the Secretariat	Submissions by States and others ¹²
First and second phase (34th to 37th sessions)	4 weeks	8 working papers averaging 15.6 pages	13 submissions averaging 8.1 pages
Third phase (38th, resumed 38th and 39th sessions)	3 weeks	13 working papers averaging 11.9 pages	18 submissions averaging 7.7 pages
Total	7 weeks	21 working papers averaging 13.3 pages	31 submissions averaging 7.9 pages

⁵ Report of Working Group III on the work of its thirty-eighth session ([A/CN.9/1004](#)), paras. 25 and 27.

⁶ Ibid.

⁷ Report of the Working Group on the work of its resumed thirty-eighth session ([A/CN.9/1004/Add.1](#)).

⁸ Supra note 5, paras. 25, 27 and 104.

⁹ Mainly the conference venue and related servicing (for example, document distribution and technical support) as well as interpretation into the official languages of the United Nations.

¹⁰ Mainly formatting, translation into the official languages of the United Nations as well as the publication and printing of documents.

¹¹ This table takes into account all official documents produced for the Working Group that has been translated into the six official United Nations languages. For the sake of simplicity, documents issued as addenda are counted as separate documents and the average length of the document is calculated based on their English version.

¹² This includes three reports of inter-sessional regional meetings submitted by the host States (see infra note 32).

10. Table 2 provides a breakdown of the average document resources utilized by the Working Group during its seven sessions.

<Table 2: Document resources utilized by Working Group III per session>

Document type	Number of pages
Annotated provisional agenda (pre-session)	4.1
Notes by the Secretariat (pre-session)	40.0
Submission by States and others (pre-session)	35.1
Draft Working Group report (in-session)	17.3
Working Group report (post-session) ¹³	17.3
Total	113.8

11. Compared to other working groups, a slightly larger Secretariat team provided servicing to Working Group III and its inter-sessional activities including the three regional meetings. The current team includes one secretary of the Working Group, two regular staff members, two junior professional officers and one administrative staff (see para. 52 below).

III. Resources utilized for previous legislative projects

12. Resources utilized by the Commission and its working groups for previous legislative projects may shed light on the resources required for the ISDS Project.¹⁴ However, it should be borne in mind that those projects had resulted in instruments of various forms and length (convention, model law, rules, legislative guide, notes, guide to enactment, explanatory notes as well as other guidance document) and in different fields of international trade law (business registry, dispute settlement, electronic commerce, insolvency, online dispute resolution, public procurement, transport and secured transactions). It should further be noted that the complexity of the issues addressed in those instruments as well as the level of consensus in the different working groups varied.

13. Table 3 illustrates the conference and document resources utilized by the Commission and Working Group II for finalizing instruments in the field of dispute settlement from 2009 to 2018.

<Table 3: Resources utilized for legislative projects in the field of dispute settlement>

Instrument and project type	Conference resources (weeks)	Notes by the Secretariat	Submissions by States and others
UNCITRAL Arbitration Rules (2010) – revision of existing text	8	16	12
UNCITRAL Rules on Transparency (2013) ¹⁵ – new text	6	10	16

¹³ The preparation of a Working Group report consists of two stages: (a) the submission and translation of draft reports during the session for adoption by the Working Group at the end of each session (CRP.1 and addenda); and (b) the submission and translation of the report as adopted by the Working Group upon conclusion of the session. For the second stage, while most parts of the report would have been pre-translated, the final report is considered separately for resource calculation purposes.

¹⁴ This section, including tables 3 to 5, illustrates the resources utilized by the Commission and its working groups. It focuses mainly on the resources utilized at the working group level. While pre-session documents for the Commission are taken into account, conference and other document resources utilized by the Commission are not, as such information was difficult to extract.

¹⁵ UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration

Mauritius Convention on Transparency (2014) ¹⁶ - new text ¹⁷	2	6	2
UNCITRAL Notes on Organizing Arbitral Proceedings (2016) – revision of existing text	3	5	1
Singapore Convention on Mediation ¹⁸ and the Model Law on Mediation ¹⁹ (2018) - new text and revision of existing Model Law ²⁰	6	11	12
Average	5 weeks	9.6	8.6

14. Table 4 indicates the conference and document resources utilized by the Commission and its working groups in finalizing four draft conventions since 2005 for adoption by the General Assembly. A proposal to develop a convention to encompass different types of procedural reform (generally referred to as a “multilateral instrument on ISDS reform”) had been scheduled for discussion at the thirty-ninth session (see para. 8 above).

<Table 4: Resources utilized for the preparation of draft conventions>

Convention	Number of articles²¹	Conference resources (weeks)	Notes by the Secretariat	Submissions by States and others
Electronic Communications Convention (2005) ²²	14 (11)	6	14	31
Rotterdam Rules (2008) ²³	86 (10)	25	18	72
Mauritius Convention on Transparency (2014)	5 (6)	2	6	2
Singapore Convention on Mediation (2018)	9 (7)	6	11	12
Average	28.5	9.75 weeks	12.25	29.25

15. Table 5 provides an overview of the conference and document resources utilized by the Commission and its working groups in finalizing 23 instruments over the last

¹⁶ United Nations Convention on Transparency in Treaty-based Investor-State Arbitration

¹⁷ The Convention is an instrument by which Parties to investment treaties concluded before 1 April 2014 express their consent to apply the UNCITRAL Rules on Transparency. As the Working Group was preparing the substantive provisions of the Rules, the preparation of such an instrument was anticipated and deliberations on the articles of the Convention followed the finalization of the Rules. Accordingly, there was some overlap of work on the two instruments.

¹⁸ United Nations Convention on International Settlement Agreements Resulting from Mediation

¹⁹ UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation

²⁰ The two instruments were prepared simultaneously by Working Group II and thus appear in the same row.

²¹ This figure does not include the number of “final clause” articles in each Convention, which is instead shown within parentheses on the right.

²² United Nations Convention on the Use of Electronic Communications in International Contracts

²³ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea

ten years (2009-2019) as well as those required in preparing the draft versions of the Electronic Communications Convention and the Rotterdam Rules.

<Table 5: Average resources utilized for the previous twenty-five UNCITRAL legislative projects>

Conference resources	Notes by the Secretariat	Submissions by States and others
5.2 weeks	17.6	7.9

16. Table 5 shows that a legislative project at UNCITRAL usually took approximately 5.2 weeks or 26 days of conference resources to complete.²⁴ In other words, the Commission was able to review a final draft 3 years after it had mandated a working group to that project, which met twice a year respectively for one week. Projects involving the preparation of a draft convention took longer to complete utilizing an average of 9.75 weeks of conference resources. Under the current pattern where the working groups meets twice a year for one-week sessions, this would mean that a legislative project is completed about 5 years after the mandate is given. However, the Rotterdam Rules project, which utilized a total of 25 weeks of conference resources, is an exception as it was completed in 6 years (from 2002 to 2008). This was possible as the Commission decided to retain the two annual sessions of two weeks each for that project.²⁵

17. Table 5 also shows that a legislative project required on average 17.6 documents to be prepared by the Secretariat. Projects involving the preparation of a draft convention required a smaller number of documents (12.25) and less was required for projects in the field of dispute settlement (9.6). This is most likely due to the fact that instruments other than a convention, particularly those of a guidance nature, tend to be lengthier and thus required a greater number of documents.²⁶

18. Table 5 also indicates that the average number of submissions received from States and others for the legislative projects was 7.9. However, projects involving the preparation of a draft convention attracted far more submissions (29.25), particularly due to a large number of submissions (72) received in preparation of the Rotterdam Rules.

19. Working groups handling the legislative projects were serviced by an average of two to three staff members of the Secretariat (including a secretary of the working group) usually with some expertise in the respective topics. Those staff members were usually engaged throughout the entire process including any preparatory work.

Summary

20. The divergence in both the substance and the form of the instruments finalized by the Commission makes it difficult to make direct comparisons. Nonetheless, the information gathered from previous legislative projects illustrates the scale and complexity of the ISDS Project as well as its resource implications. Entering into its third phase of work, Working Group III has utilized 6 weeks of conference resources

²⁴ This also entails the same level of in-session document resources, mainly the preparation of the reports of the session.

²⁵ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17 (A/56/17)*, paras. 376-383 and 425(c). The Commission, in 2001, increased the number of working groups from three to six, each of which would generally hold two annual sessions of one week each. However, the working group tasked with the preparation of the Rotterdam Rules was authorized by the Commission to hold two-week sessions from 2002 to 2008, except for its session in September 2002, which met for one week.

²⁶ There is a limitation on documents originating in the Secretariat, which should be no longer than 16 pages (8,500 words). Intergovernmental bodies are invited to consider, where appropriate, reducing their report to 20 pages (10,700 words). See General Assembly Resolution [A/RES/52/214](#), section B, paras. 4 and 7 (reiterated in [53/208](#), [59/265](#)).

(in comparison with the average of 5.2 weeks per project) with the Secretariat preparing a total of 21 documents (in comparison with the average of 17.6 per project). The number of submissions from States and others (31) is also greater than the average of 7.9 submissions for other projects and is at level with projects involving the preparation of a draft convention (29.25). Therefore, the ISDS Project is likely to utilize far greater resources than previous legislative projects as deliberations on each of the reform options will intensify and as multiple reform solutions are considered by the Working Group.

21. Similar to the resources required, it is difficult to anticipate when the ISDS Project could be completed. However, should the Commission consider that the Rotterdam Rules project provides a suitable comparison due to the complexity of the issues and the number of delegations involved, this would mean that at least 18 more weeks of deliberations at the Working Group would be required beginning in 2021 to complete the ISDS Project, with expected finalization by the Commission in 2030.

22. It may also be possible to consider a certain reform solution (for example, an appellate mechanism) or a group of reforms solutions (for example, security for costs, means to address frivolous claims, multiple proceedings, counterclaims and reflective loss) as constituting a legislative project similar to those that had been undertaken by a working group. Taking this approach, the ISDS Project could be viewed as consisting of more or less five legislative projects. Applying the average of 5.2 weeks of conference resources utilized per project, this would mean that 19 more weeks of deliberations at the Working Group would be required beginning 2021 to complete the ISDS Project, with the expected finalization by the Commission in 2031.

IV. Estimate of resources required based on the list of solutions and means of implementation

Assessment of the resources required

23. Another way to estimate the resources required to implement the ISDS Project is by assessing the resources required for the respective reform solutions that have been identified so far. As with any other legislative projects, the actual conference resources required would depend largely on the form of the instrument, complexity of the issues addressed as well as the time required to reach consensus on those issues. Subject to this qualification, table 6 provides a list of reform solutions being considered by the Working Group and a speculation of the number of conference days and of notes by the Secretariat required beginning 2021 for the Working Group to deliberate and conclude work on each of the solutions.²⁷

<Table 6: List of reform solutions and an estimate of resources required from 2021 utilizing formal Working Group sessions only>

Reform solutions	Status	Time required (days)	Notes by the Secretariat
Code of conduct	(a)	4	2
Multilateral advisory centre		6	3
Third-party funding		4	2

²⁷ Table 6 is based on an analysis of the deliberation of the Working Group during its previous six sessions and the divergence in views expressed with regard to each of the solutions. It is based on some assumptions, mainly that: (a) the Working Group session in the second half of 2020 will be devoted to discussing the reform options as had been agreed (see para. 8 above); (b) the Working Group would discuss a reform solution not in a single session but over a few sessions, with more than one topic being discussed in a single session; and (c) the Commission would need time to consider the reform solutions recommended by the Working Group. Depending on the level of consensus obtained at the Working Group and the Commission, further negotiations may need to be conducted at the Sixth Committee/General Assembly.

Stand-alone review or appellate mechanism	(b)	10	5
Standing multilateral body or mechanism		10	5
Selection and appointment of ISDS tribunal members		8	4
Dispute prevention/mitigation and ADR	(c)	6	2
Treaty interpretation by States		4	2
Security of costs		3	2
Means to address frivolous claims		3	2
Multiple proceedings including counterclaims		4	2
Reflective loss/share holder claims		4	2
Multilateral instrument on ISDS reform		8	4
Damages	(d)	6	3
Total		80 days	40
Status (a) Considered at the 38 th session and preparatory work being undertaken by the Secretariat (b) Considered at the resumed 38 th session and preparatory work being undertaken by the Secretariat (c) Scheduled for consideration at the 39 th session based on notes prepared by the Secretariat (d) Preparatory work being undertaken by the Secretariat			

24. Under the current pattern of meetings, Working Group III meets twice a year for a one-week session with four days dedicated to substantive discussion and one day dedicated to the adoption of the report.²⁸ Table 6 estimates that a total of 80 days of conference resources would be required by Working Group III to address all the reform solutions and to complete the ISDS Project. This thus translates into 20 sessions of the Working Group over a period of 10 years beginning 2021, with the expected finalization by the Commission in 2031. For each session, the Secretariat would be preparing an average of 2 working papers, which is similar to the document resources utilized until now (see table 1 above).

25. The above analysis is based on the idea that most of the deliberations would be undertaken by the Working Group through its formal sessions. However, as outlined in document A/CN.9/WG.III/WP.158 and below, there are other means to implement the project schedule within existing resources.

Allocation of conference time allotted to UNCITRAL (A/CN.9/WG.III/WP.158, paras. 6-10)

26. Meetings of the Commission and its working groups are held using conference time allotted to UNCITRAL, which is currently a maximum of fifteen weeks per year. The Commission may, therefore, wish to consider making available any unused conference time of the Commission or other working groups to the ISDS Project,

²⁸ Working group are 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) (See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17), para. 381). However, considering the length of time required for adopting the reports of Working Group III, the practice has been that one full day would be dedicated for that purpose.

which had been the case for the unused week of the Commission in 2019²⁹ and the case of the Rotterdam Rules project.³⁰

27. However, it is not foreseen that there will be any unused working group time that could be made available beginning 2021 or in the near future (see document A/CN.9/1016). With regard to unused Commission time, the Commission may wish to recall its understanding that two weeks for its annual sessions would generally be sufficient.³¹ In that case, it is possible that one week of Commission time may become available.

28. However, this is subject to change on a yearly basis, as the Commission reiterated that the duration of each of its annual sessions was to be determined on a case-by-case basis depending on the expected workload. Furthermore, determination by the Commission to allocate its unused conference time to a working group during its annual session (usually held in June or July) poses practical challenges of identifying a suitable conference time in the second half of the year and rescheduling other working group dates, particularly if a two-week session is to be held. It also leads to difficulties in planning, as Working Group III would not be able to know whether it would meet for one or two weeks in the second half of the year and if so, when.

Informal meetings (A/CN.9/WG.III/WP.158, paras. 11-14)

29. A number of side events have been organized in the margins of Working Group III sessions. In addition, three inter-sessional regional meetings have taken place respectively in the Republic of Korea, the Dominican Republic and the Republic of Guinea.³² These events and meetings have generally aimed at raising awareness of the ongoing discussions at Working Group III, providing capacity building to delegates from developing and least developed countries with respect to the different reform solutions and building consensus.

30. One way to facilitate the deliberations on the different reform solutions and reduce the time required to complete the ISDS Project would be to further utilize such informal meetings. The Commission may wish to recall that it had invited delegations to resort to informal consultations prior to actual meetings, thus reserving conference time only for those issues which required extensive deliberation in the context of Commission and working group meetings.³³

31. For this purpose, the Secretariat is planning to organize a number of informal meetings (webinars, drafting groups and expert group meetings) to suit each reform option. For example, two webinars on the establishment of an advisory centre and on a multilateral instrument on ISDS reform was held in cooperation with the Academic Forum in April 2020 and similar events will follow.

32. As of the submission date of this note, there have also been proposals to host inter-sessional meetings in three different locations: one in September 2020 in Peru, one in November 2020 in Hong Kong, China and one in Australia (subject to further confirmation). Similar to the previous inter-sessional meetings, it is expected that no decisions would be made at these meeting and that the host State would report the results of those meetings to the Working Group. However, unlike previous inter-sessional meetings which focused on the regional context, the proposed inter-sessional meetings aim more at addressing specific reform options making it possible to further the discussions in-between formal sessions. For example, the inter-sessional meeting hosted by Hong Kong, China is expected to focus on investment mediation and dispute prevention.

²⁹ Ibid., Seventy-fourth Session, Supplement No. 17 (A/74/17), para. 329.

³⁰ Supra note 25.

³¹ Supra note 29, para. 331.

³² Summary of the intersessional regional meetings are available respectively as A/CN.9/WG.III/WP.154 (Republic of Korea), A/CN.9/WG.III/WP.160 (Dominican Republic) and A/CN.9/WG.III/WP.183 (Republic of Guinea).

³³ General Assembly Resolution A/RES/61/31 (2006), para. 9.

33. Joint work or meetings with other organizations are also envisaged. For example, on the code of conduct, the Secretariat has cooperated closely with the ICSID Secretariat to develop a draft Code of Conduct for Adjudicators in ISDS.³⁴ With regard to reflective loss and shareholder claims, the Secretariat is cooperating with the Organization for Economic Cooperation and Development (OECD) to co-host an event to deliberate the issue further.

34. The Commission may, however, wish to note some limitations of informal meetings. First, as informal meetings, it is not possible to hold them in all official languages of the United Nations. Second, the Secretariat has very limited resources to organize, to participate and to support participation of delegations in such informal meetings. This poses challenges in ensuring a wide level of participation and achieving appropriate regional balance. In light of the COVID-19 situation and to address this shortcoming, the Secretariat is making efforts to utilize technological means to host such informal meetings. Lastly, decisions, in any case, would need to be made at formal meetings of working groups or the Commission. In that context, the Commission may wish to note the resolution of the General Assembly in 2006, which recalled that the responsibility for the work of the Commission lay with the meetings of the Commission and its intergovernmental working groups.³⁵

35. Despite such limitations, informal consultations can facilitate a better understanding of the different positions of the delegations and keep them informed of, and engaged in, the on-going deliberations. They could also provide the opportunity to overcome disagreements and to develop options for consideration by the Working Group. Overall, they could assist in building consensus, thus ensuring that formal meetings are reserved for those issues, which require more extensive deliberations. Ideally, this would reduce the conference resources required as presented in table 6.

36. Table 7 provides an estimate of how much of the required conference time in table 6 could be reduced by utilizing informal inter-sessional meetings. It illustrates that the number of days required for formal deliberations could be reduced from 80 to 64 days. This translates into 16 sessions of the Working Group over a period of 8 years beginning 2021, with the expected finalization by the Commission in 2029. For each session, the Secretariat would be preparing an average of 2.5 working papers, which is similar to the document resources utilized until now (see tables 1 and 6 above).

<Table 7: List of reform solutions and an estimate of resources required from 2021 utilizing formal Working Group sessions and informal meetings>

Reform solutions	Time required (days)
Code of conduct	4 → 3
Multilateral advisory centre	6 → 4
Third-party funding	4
Stand-alone review or appellate mechanism	10 → 8
Standing multilateral body or mechanism	10 → 8
Selection and appointment of ISDS tribunal members	8
Dispute prevention/mitigation and ADR	6 → 4
Treaty interpretation by States	4 → 3
Security of costs	3
Means to address frivolous claims	3
Multiple proceedings including counterclaims	4 → 3
Reflective loss/share holder claims	4 → 3
Multilateral instrument on ISDS reform	8 → 6

³⁴ Available at <https://uncitral.un.org/en/codeofconduct>.

³⁵ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17 (A/56/17), para. 382.

Damages	6 → 4
Total	80 → 64 days

V. Anticipated completion of the ISDS Project and additional conference time required

37. The analyses above (see paras. 21, 22, 24 and 36) indicate that the ISDS Project would be completed within an estimate of 8 to 10 years from 2021. This section provides means for the consideration by the Commission, should it wish to complete the ISDS Project within a shorter period of time. It also provides illustrations of the additional conference time and resources that may be required under different scenarios.

Means to complete the ISDS Project in a shorter period of time

38. At the thirty-seventh session of the Working Group, it was suggested that a “staged” approach (whereby priority could be given to reform solutions where there was consensus and which seek to first address the most pressing concerns) could achieve results in a shorter period of time.³⁶ However, such an approach would run contrary to the decision by the Working Group to discuss, elaborate and develop multiple potential reform solutions simultaneously, to the maximum extent of the Working Group’s capacity and in light of the tools available.³⁷ Furthermore, if the Working Group were to decide to prepare a multilateral instrument that would encompass all reform options, a “staged” approach might not achieve in a coherent result.

39. Document A/CN.9/WG.III/WP.158 sets forth a number of means for implementing a project schedule. It first explains the means available within existing resources (as discussed in paras. 26-35 above) and further mentions means that would involve additional resources. Among the latter, the creation of an additional working group(s)³⁸ would require the allocation of additional conference time. Furthermore, it may be premature for the Commission to pursue a stand-alone project for the negotiation of a multilateral instrument on ISDS reform,³⁹ while at a later stage of its deliberations, it may wish to recommend the holding of a diplomatic conference for the adoption of a multilateral convention.

40. Accordingly, one possible option for consideration by the Commission would be to seek from the General Assembly the allocation of additional conference time for the purposes of advancing the deliberations at Working Group III.⁴⁰ Considering the budget situation of the United Nations, it will likely be challenging to obtain additional regular budget resources when the overall budget is being heavily scrutinized.⁴¹ Nonetheless, the Commission may wish to signal the importance of ISDS reforms and the need to deliver results as early as possible. Mindful of the current circumstances, the Commission may wish to consider requesting additional resources for a limited period of time within which it would achieve the desired outcome. Such an approach would likely ensure a more effective use of the resources available to the Commission.

41. Should the Commission decide to request additional conference time, it would be necessary to assess how much additional conference time would be required. And this, in turn, would largely depend on the Commission’s expectation on when the ISDS Project should be completed properly addressing the concerns that the Working Group had identified during its first phase.

³⁶ Report of the Working Group on the work of its thirty-seventh session (A/CN.9/970), para. 67.

³⁷ Ibid., para. 81.

³⁸ A/CN.9/WG.III/WP.158, para. 17.

³⁹ Ibid., para. 17.

⁴⁰ Ibid., para. 16.

⁴¹ Supra note 36, para. 49.

Additional conference time required

42. There may be divergence in views with regard to the reasonable time frame to complete the ISDS Project. Accordingly, it is not possible to estimate the additional conference time required for all possible scenarios. Tables 8 and 9 below provide an analysis of the additional conference time required and how the Working Group sessions could be scheduled, for example, if the Commission expects the ISDS Project to be completed in 2023 or in 2024.⁴² The additional conference time required per year would likely be less, if the Commission determines that the ISDS Project could be completed after 2024. Tables 8 and 9 are provided only to assist the Commission in exploring different scenarios and without prejudice to decisions to be made by the Working Group or the Commission on the matter.

43. Should the Commission consider that the ISDS Project should be completed in 2023, 4 additional weeks of conference time would be required per year for a period of 3 years. This would allow the holding of seven 2-week Working Group sessions until the first half of 2023,⁴³ which would be followed by 3 weeks of deliberations by the Commission to finalize the ISDS Project.⁴⁴

<Table 8: Additional conference time required for completion of the project in 2023 and possible scheduling of meetings>

Year	Conference time (weeks)		Scheduling of 2-week Working Group sessions		
	Time allotted	Additional time	First half (New York)	Mid-year (Vienna)	Second half (Vienna)
2021	2	4	✓	✓	✓
2022	2	4	✓	✓	✓
2023	1	4	✓	3-week Commission session dedicated to the ISDS Project	
	Total	12			

44. Should the Commission consider that the ISDS Project should be completed in 2024, 2 additional weeks of conference time would be required per year for a period of 4 years. This would allow the holding of seven 2-week Working Group sessions until the first half of 2024,⁴⁵ which would be followed by a week of deliberations by the Commission to finalize the ISDS Project.⁴⁶

<Table 9: Additional conference time required for completion of the ISDS Project in 2024 and possible scheduling of meetings>

⁴² Tables 8 and 9 are based on some assumptions, mainly that: (a) according to table 7, 64 days of conference time would be required beginning 2021 to complete the ISDS Project; and (b) the Working Group would hold two-week sessions instead of a one-week session with nine days dedicated to substantive discussions and the remaining one day dedicated to the adoption of the report. The latter is due to the fact that it is often difficult to identify one-week sessions with appropriate intervals and that the cost of travel for delegations particularly from developing countries is expected to be lower compared to two one-week sessions. In addition, it would be possible to allocate only one day for the adoption of the report instead of two days, which will be required if two one-week sessions are held. The Commission may wish to recall that different views had been expressed on holding a two-week session or two one-week sessions. See *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 326.

⁴³ Sixty-three days of substantive discussion and 7 days of report adoption.

⁴⁴ This would be in addition to the 3 weeks of conference time allotted for the annual session of the Commission. A longer period is forecasted for the finalization by the Commission as all the issues might not have been resolved at the Working Group level.

⁴⁵ It may also be possible to retain the two one-week sessions in the first and second half of the year and additionally hold a two-week session in the mid-year.

⁴⁶ This would be in addition to the 3 weeks of conference time allotted for the annual session of the Commission.

Year	Conference time (weeks)		Scheduling of 2-week Working Group sessions	
	Time allotted	Additional time	First half (New York)	Second half (Vienna)
2021	2	2	✓	✓
2022	2	2	✓	✓
2023	2	2	✓	✓
2024	1	2	✓	1-week Commission session dedicated to the Project
	Total	8		

45. If the General Assembly, upon recommendation by the Commission, eventually decides in late 2020 to grant additional conference time, the dates and place of other working group meetings may need to be adjusted thereafter. For example, to hold a Working Group III session of two consecutive weeks in 2021, the dates of Working Groups IV and/or VI in the first half of 2021 and the dates of Working Group VI in the second half of 2021 may need to be adjusted.⁴⁷

46. In examining the above, the Commission may wish to take into account the uncertainties that currently exist due to the COVID-19 situation. Five of the six working group sessions scheduled during the first half of 2020 could not take place. As of the submission date of this note, it is difficult to predict whether and the extent to which the pandemic could impact upcoming formal meetings of the Commission and its working groups. Considering that a number of official meetings are being postponed to later in 2020 as well as to 2021, the conferences resources in both Vienna and New York are scarce and their availability is subject to change. Therefore, extensive consultations with the Department for General Assembly and Conference Management (DGACM) would need to be sought.

VI. Request for additional resources and programme budget implications

47. If the Commission decides to recommend to the General Assembly that additional conference time be allocated to the Commission for advancing the deliberations at Working Group III, this will then need to be reflected in the draft resolution submitted to the Sixth Committee of the General Assembly. In that process, the budgetary implications of the request on the programme budget (mainly Section 2 - General Assembly and Economic and Social Council affairs and conference management and Section 8 - Legal affairs) would be reviewed by different bodies, including the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and the Fifth Committee of the General Assembly.

48. This section provides an overview of the programme budget implications so that the Commission would be in a better position to make an informed decision. However, it should be noted that the budget implications could vary depending on the actual request made by the Commission as well as where the meetings are held and which duty station provides the relevant services. All figure in this section would need to be verified by the Programme Planning and Budget Division (PPBD).

Conference resources

49. An additional week of conference time would consist of 10 meetings (2 per day consisting of three hours) either in New York or Vienna. These meetings would require interpretation in all official languages of the United Nations and would constitute an addition to the meetings workload of DGACM. This would entail additional resource

⁴⁷ The tentative dates for Working Group III in 2021 are 12 to 16 April in New York and 15 to 19 November in Vienna (A/CN.9/1001, para. 49).

requirements for meetings services in the amount of approximately \$170,000 per each additional week.

Document resources

50. An additional week of conference time would increase the documentation workload of DGACM, mainly translation of the documents into the official languages of the United Nations. If held separately from a scheduled working group session, the additional document workload would be 7 pre-session documents (total of 59,500 words),⁴⁸ 5 in-session documents (total of 10,700 words) and one post-session document (total of 10,700 words). This would entail additional resource requirements for documentation services in the amount of \$318,697.⁴⁹ If held as an extension of a scheduled session, the additional resource requirements for documentation services would be estimated at \$243,000.⁵⁰

UNCITRAL Secretariat resources

51. The servicing of additional sessions of the Working Group and providing continued support to increased number of informal meetings (see paras. 29-35 above) would require the current team servicing Working Group III to be expanded. This can be achieved by either relieving the current team members from other duties or including other Secretariat members as new team members. However, both options would likely have a negative impact on the Secretariat's role in supporting other work programmes of the Commission.

52. The Commission may wish to further note that among the members of the current team, there are two junior professional officers whose posts are funded by the governments of Germany and the People's Republic of China and that their terms will expire in 2021.

53. The Commission may wish to further recall that at its fifty-second session in 2019, it had expressed its appreciation to the European Union, the Swiss Agency for Development and Cooperation (SDC) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) for their contributions to the UNCITRAL trust fund for granting travel assistance to developing countries, aimed at enabling the participation of representatives of developing States in the deliberations of Working Group III as well as in regional intersessional meetings.⁵¹ Should such contributions continue in the future, the administrative support for providing travel assistance to delegations to attend the additional Working Group session will also likely grow.

54. Therefore, to ensure that the work programme of the Commission is not adversely affected by the additional conference time allotted to Working Group III, three new posts would be required as outlined in table 10. This would entail additional resource requirements ranging from \$353,400 to \$401,900 in 2021 depending on whether the post is to be funded by regular or extrabudgetary resources.⁵²

<Table 10: Additional human resources >

	Regular budget	Extrabudgetary resources
Legal Officer (P-3)	\$ 139,600	\$ 166,100

⁴⁸ One provisional agenda, two to three notes by the Secretariat and four submissions by States and others, all estimated at 8,500 words (see *supra* note 26).

⁴⁹ Based on figures provided by document management services in Vienna. Cost of translation of one English Standard Page (ESP, which consists of 330 words) into one other language is set at 260 USD. The programme budget implication rate may vary depending on where the document services are to be provided.

⁵⁰ This is based on the assumption that there would be no need to produce a separate provisional agenda nor the post-session report.

⁵¹ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 165.

⁵² Based on UNOV/UNODC Revised Standard Salary Costs (2020-2023) for Vienna. For the post funded by the regular budget, the figure for "continuing" staff costs was used.

Associate Legal Officer (P-2)	\$ 115,100	\$ 130,900
Administrative Assistant (G-6)	\$ 98,700	\$ 104,900
Total	\$ 353,400	\$ 401,900

55. Moreover, additional resources in the amount of \$13,000 would be required to acquire furniture and equipment for the new staff members; \$5,400 for ICT-related services; and \$13,593 for travel expenses of staff to service working group sessions in New York.

VII. Concluding remarks

56. As mentioned in the introduction, the objective of this note is to provide the Commission with information on the resource requirement to implement the work programme of the Commission with respect to ISDS reform. Based on this note and having assessed the progress made by Working Group III so far, the Commission may wish to consider whether it would be appropriate and possible to set a target date for completion of the ISDS Project and if so, the means to be utilized to ensure that the target date is met. Should the Commission consider it feasible and desirable to complete the ISDS Project within a set time period, it may wish to assess the existing resources available to it and further consider recommending to the General Assembly that additional conference and supporting resources be allocated to UNCITRAL for advancing and completing the ISDS Project within that time period.
