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International Trade Law**  
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## **Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its fifty-third session (New York, 12–16 January 2026)**

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## I. Introduction

1. 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). From its thirty-fourth to thirty-seventh sessions, the Working Group identified and discussed concerns regarding ISDS and considered that reform was desirable in light of the identified concerns.<sup>1</sup> From its thirty-eighth to fifty-first sessions, the Working Group considered concrete solutions for ISDS reform.<sup>2</sup>

2. At its fifty-eighth session in July 2025, the Commission: (i) finalized and adopted the UNCITRAL Toolkit on Prevention and Mitigation of International Investment Disputes; (ii) took note of the progress made by Working Group III; (iii) considered the operationalization of the Advisory Centre on International Investment Dispute Resolution (“Advisory Centre”); and (iv) decided to recommend to the General Assembly that additional conference time and supporting resources be allocated to the secretariat for a period of two more years, from 2026 to 2027, as outlined in document [A/CN.9/1217](#).<sup>3</sup> The chair of the Working Group provided an outline of the work to be conducted by the Working Group until the fifty-ninth session of the Commission in 2026, further indicating that the Working Group would aim to present reforms relating to procedural and cross-cutting issues and a standing mechanism for consideration by the Commission.<sup>4</sup>

3. At its fifty-second session in September 2025, the Working Group considered draft provisions 5 to 8 on procedural and cross-cutting issues based on documents [A/CN.9/WG.III/WP.253](#) and [A/CN.9/WG.III/WP.254](#). In addition, it considered a draft statute of a standing mechanism for the resolution of international investment disputes based on documents [A/CN.9/WG.III/WP.239](#), [A/CN.9/WG.III/WP.240](#) and [A/CN.9/WG.III/WP.241](#) as well as issues related to its structure and design based on document [A/CN.9/WG.III/WP.256](#).<sup>5</sup>

4. In November 2025, the ninth intersessional meeting of the Working Group, which focused on draft provisions 12, 18, 19 and 20 on procedural and cross-cutting issues, was held in Santiago.<sup>6</sup>

## II. Organization of the session

5. The Working Group, which was composed of all States members of the Commission, held its fifty-third session from 12 to 16 January 2026 at the United Nations Headquarters in New York.

6. The session was attended by the following States members of the Working Group: Argentina, Armenia, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Côte d’Ivoire, Czechia, Democratic Republic of the Congo, Dominican Republic, El Salvador, France, Germany, Ghana, Greece, Hungary, India, Iraq, Israel, Italy, Japan, Kuwait, Malaysia, Mexico, Morocco, Netherlands (Kingdom of the), Nigeria, Panama, Peru, Philippines, Poland, Republic of Korea, Russian Federation,

<sup>1</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.

<sup>2</sup> The deliberations and decisions of the Working Group at its thirty-eighth to fifty-first 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](#); [A/CN.9/1130](#); [A/CN.9/1131](#); [A/CN.9/1160](#); [A/CN.9/1161](#), [A/CN.9/1167](#), [A/CN.9/1194](#), [A/CN.9/1195](#), [A/CN.9/1196](#) and [A/CN.9/1196/Add.1](#).

<sup>3</sup> *Official Records of the General Assembly, Eightieth Session, Supplement No. 17 (A/80/17)*, paras. 137–147; 167–177; 188–211; and 284–293, respectively.

<sup>4</sup> *Ibid.*, para. 172.

<sup>5</sup> The deliberations and decisions of the Working Group at its fifty-second session are set out in document [A/CN.9/1238](#).

<sup>6</sup> A summary of the ninth intersessional meeting on ISDS reform submitted by the Government of Chile is available in document [A/CN.9/WG.III/WP.263](#).

Saudi Arabia, Singapore, Spain, Sweden, Switzerland, Thailand, Türkiye, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Viet Nam and Zambia.

7. The session was attended by observers from the following States: Algeria, Bahrain, Cambodia, Chad, Costa Rica, Croatia, Cuba, Ecuador, Egypt, Estonia, Finland, Guatemala, Indonesia, Kyrgyzstan, Lithuania, Myanmar, Namibia, Oman, Romania, San Marino, Tunisia and United Republic of Tanzania.

8. The session was also attended by observers from the European Union.

9. The session was also attended by observers from the following international organizations:

(a) *United Nations System*: International Centre for Settlement of Investment Disputes (ICSID) and United Nations Conference on Trade and Development (UNCTAD);

(b) *Intergovernmental organizations*: Commonwealth Secretariat, International Organization for Mediation (IoMED), Organization of the Petroleum Exporting Countries (OPEC) and Permanent Court of Arbitration (PCA);

(c) *Invited non-governmental organizations*: Academic Forum, African Arbitration Association (AfAA), American Arbitration Association – International Centre for Dispute Resolution (AAA/ICDR), American Bar Association (ABA), American Society of International Law (ASIL), ArbitralWomen, Asian Academy of International Law (AAIL), Centre for International Law, National University of Singapore (CIL), Centre for International Legal Studies (CILS), China Council for the Promotion of International Trade (CCPIT), China International Economic and Trade Arbitration Commission (CIETAC), Columbia Centre on Sustainable Investment (CCSI), Corporate Counsel International Arbitration Group (CCIAG), European Chinese Arbitrators Association (ECAA), Forum for International Conciliation and Arbitration (FICA), Institute for Transnational Arbitration at the Center for American and International Law (CAIL/ITA), Institutio Ecuatoriano de Arbitraje (IEA), International and Comparative Law Research Center (ICLRC), International Chamber of Commerce (ICC), International Institute for Environment and Development (IIED), International Institute for Sustainable Development (IISD), International Law Institute (ILI), Inter-Pacific Bar Association (IPBA), London Court of International Arbitration (LCIA), Mid-Atlantic Caribbean Alternative Dispute Resolution Institute (MACADRI), Milan Chamber of Arbitration, New York City Bar (NYCBA), New York International Arbitration Center (NYIAC), New York State Bar Association (NYSBA), Organization of Islamic Cooperation Arbitration Centre (OIC-AC), Regional Centre for International Commercial Arbitration (RCICAL), School of International Studies at the University of Trento (SIS), Stockholm Chamber of Commerce Arbitration Institute (SCC Arbitration Institute) and United States Council for International Business (USCIB). The Working Group elected the following officers:

*Chair*: Mr. Shane Spelliscy (Canada)

*Rapporteur*: Ms. Natalie Yu-Lin Morris-Sharma (Singapore)

10. The Working Group had before it the following documents: (i) annotated provisional agenda ([A/CN.9/WG.III/WP.258](#)); (ii) draft provisions on procedural and cross-cutting issues and annotations thereto ([A/CN.9/WG.III/WP.253](#), [A/CN.9/WG.III/WP.254](#) and [A/CN.9/WG.III/WP.262](#)); and (iii) draft guidelines on the calculation of damages and compensation in investor-State dispute settlement ([A/CN.9/WG.III/WP.255](#)). In addition, the following documents were made available: (i) submission from the Governments of Viet Nam and Nigeria ([A/CN.9/WG.III/WP.261](#), in English); and (ii) summary of the ninth intersessional meeting on ISDS reform submitted by the Government of Chile ([A/CN.9/WG.III/WP.263](#), in English and Spanish).

11. The Working Group adopted the following 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.

12. It was recalled that at the fifty-second session in September 2025, the Working Group had agreed that subject to additional conference resources, adjustments would be made so that the agenda of the following two sessions would focus on the draft provisions on procedural and cross-cutting issues (fifty-third session) and the standing mechanism (fifty-fourth session), with an aim to present results (or parts thereof) to the Commission in 2026.<sup>7</sup> Noting that a session of the Working Group was scheduled to be held in March 2026 in Vienna, the Working Group agreed that discussions at the current session would begin with draft provisions 9 to 22 on procedural and cross-cutting issues followed by the form of the draft provisions, including how they would interact with the underlying investment agreements. It was further agreed that time permitting, discussions would continue on the draft guidelines on the calculation of damages and compensation.

13. The Working Group expressed its appreciation for the contributions to the UNCITRAL trust fund from the European Union, the Government of France, the Swiss Confederation and the Federal Ministry of Economic Cooperation and Development of Germany, aimed at allowing the participation of representatives of developing States in the deliberations of the Working Group, including through informal briefings and securing interpretation in informal sessions, all of which ensured that the process remained inclusive and fully transparent.

### III. Draft provisions on procedural and cross-cutting issues ([A/CN.9/WG.III/WP.253](#), [A/CN.9/WG.III/WP.254](#) and [A/CN.9/WG.III/WP.262](#))

#### A. Introduction

14. It was recalled that the Working Group had considered the draft provisions on procedural and cross-cutting issues (DP) most recently as follows: (a) DP 10, 12 (paras. 6 and 8), 13 and 20 at the forty-ninth session in September 2024;<sup>8</sup> (b) DP 1 to 4 at the fiftieth session in January 2025;<sup>9</sup> (c) DP 14 to 19 at the fifty-first session (second part) in April 2025;<sup>10</sup> and (d) DP 5 to 8 at the fifty-second session in September 2025.<sup>11</sup> In addition, DP 12, 18, 19 and 20 were considered at the ninth intersessional meeting in November 2025.<sup>12</sup>

15. The Working Group agreed to proceed to consider the DPs as they appear in the following documents: (a) DP 9, 10, 11, 13–17, 21 and 22 in document [A/CN.9/WG.III/WP.253](#); and (b) DP 12, 18, 19 and 20 in document [A/CN.9/WG.III/WP.262](#) (including the proposal for DP 20 in [A/CN.9/WG.III/WP.261](#)). It was noted that the latest version of DP 1 to 4 appeared in document [A/CN.9/WG.III/WP.253](#) and DP 5 to 8 in document [A/CN.9/WG.III/WP.262](#).

<sup>7</sup> [A/CN.9/1238](#), para. 136.

<sup>8</sup> [A/CN.9/1194](#), paras. 57–104.

<sup>9</sup> [A/CN.9/1195](#), paras. 23–69.

<sup>10</sup> [A/CN.9/1196/Add.1](#), paras. 67–109.

<sup>11</sup> [A/CN.9/1238](#), paras. 15–81.

<sup>12</sup> [A/CN.9/WG.III/WP.263](#).

## B. Provision-by-provision deliberations

### Draft Provision 9 – Allocation of costs

#### *Paragraph 1*

16. While suggestions were made to delete paragraph 1 to provide further flexibility to the Tribunal in allocating costs, it was widely felt that there was benefit in retaining a default rule that the unsuccessful disputing party should bear the costs of the proceeding.

17. It was suggested that DP9 define “costs” or at least clarify that the fees incurred by the disputing parties for legal representation were covered by the notion of “costs”. In support, it was stated that inclusion of a definition or such clarification would enhance clarity and predictability, and reference was made to UNCITRAL Arbitration Rules (UARs) 40(2) and 2022 ICSID Arbitration Rules (ICSID Rules) 50. However, it was noted that the applicable treaty, arbitration rules or domestic law might take different approaches to the notion of “costs” and the inclusion of a definition in DP9 could create conflicts with those instruments, which would then need to be addressed. Considering that DP9 could operate without defining “costs”, it was generally felt that the definition and scope of “costs” would be determined in accordance with the applicable rules (except for paragraph 5, which provided for an exclusion) and that DP9 would focus on addressing how the costs would be allocated.

18. Questions were raised on whether DP9 should be subject to any contrary rule in the Agreement and whether it could be varied by the disputing parties. It was noted that if developed as a treaty provision, it should prevail over the applicable arbitration rules. It was agreed that those issues would need to be considered more broadly in connection with the form and implementation of the DPs. Subject to those deliberations (see paras. 52–60 below), the Working Group approved paragraph 1 unchanged.

#### *Paragraph 2*

19. With regard to the chapeau, a suggestion was made to include the word “exceptionally” after the word “may”. However, it was noted that the threshold for departing from the default rule in paragraph 1 was intended to refer to the consideration of all relevant circumstances of a case, and this was intended to be lower than the threshold in paragraph 3, which referred to there being “exceptional circumstances” justifying an allocation of costs between the parties. It was mentioned that it was often difficult to determine who was the “unsuccessful” party. It was also observed that the term “including” at the end of the chapeau made it clear that subparagraphs (a) to (e) were non-exhaustive examples and that the phrase “taking into account” indicated that none of those elements were automatically determinative of the cost decision. After discussion, there was wide support for retaining the chapeau in its current form, noting that the word “however” indicated a departure from the default rule in paragraph 1.

20. While a suggestion was made that “abuse of proceeding” or “frivolous claims” should be taken into account by the Tribunal, they were viewed as being covered under subparagraph (b). A suggestion was also made to clarify what “conduct of the disputing parties” referred to, but it did not find support. Another suggestion was that reference could be made in that subparagraph to the engagement of disputing parties in amicable settlement during the proceeding, by including an explicit reference to DP13. Noting that DP13 did not mandate disputing parties to engage in amicable settlement and that the subparagraph broadly captured such acts by disputing parties, it was agreed to retain subparagraph (b) unchanged.

21. While a suggestion was made that “necessity” and “proportionality” of costs should also be considered by the Tribunal, it was observed that such factors could lead the Tribunal to assess the value of the costs. In any case, it was generally felt that

the standard of “reasonableness” in subparagraph (d) broadly encompassed such notions.

22. While it was suggested that subparagraph (e) should be amended or deleted as it would apply mainly to the conduct of a claimant, it was generally felt that the subparagraph should be retained, as it would serve to address exaggerated or inflated claims, including possibly by the respondent in its counterclaim. It was further viewed that the subparagraph as well as paragraph 5, which were novel to the UARs, would promote the fair and equitable allocation of costs.

23. Subject to those changes (see also para. 35 below), the Working Group approved paragraph 2.

#### *Paragraphs 3 and 4*

24. The Working Group approved paragraphs 3 and 4, unchanged.

#### *Paragraph 5*

25. It was observed that paragraph 5 should be read in conjunction with DP12, which contained the definition of third-party funding (TPF) and required its disclosure.

26. A suggestion was made that paragraph 5 should clarify that all costs borne by the third-party funder should be excluded from “recoverable” costs, including the fees for legal representation, expenses for experts and fees of the Tribunal. It was said that this would effectively limit TPF to instances where it was justified as a means for access to justice, and that a third-party funder could, in any case, recover such costs from the damages awarded, without necessarily relying on the cost award. An alternative suggestion was that only costs actually incurred and funded by the successful disputing party should be recoverable but not costs funded by a third-party funder.

27. However, it was generally understood that the scope of expenses excluded in accordance with paragraph 5 were those incurred by a disputing party “related to or arising from third-party funding” – for example, expenses incurred when negotiating the TPF arrangement including an assessment of the feasibility of such an arrangement, any expenses associated with maintaining such an arrangement, and fees charged by that third-party funder. It was observed that the mere existence of TPF and a different structure to make payments would not require a departure from the general rule that fees for legal representation and other expenses would be recoverable through the allocation of costs. To clarify these points, it was suggested that the phrase “related to or arising from” be replaced with “specifically arising from”. It was also noted that narrowing the scope of costs to those actually “incurred and funded” by the disputing party might result in excluding other justifiable costs and that the discretion should be left to the Tribunal based on the standard of reasonableness.

28. A suggestion that the Tribunal should be able to order a cost award against a third-party funder to address the risk of the other disputing party not being able to recover costs did not receive support. It was noted that the Tribunal did not have jurisdiction over the third-party funder and it was widely felt that such risks were sufficiently addressed by DP5 on security for costs and DP12 on TPF.

29. Subject to subsequent changes to address success fees (see para. 37 below), the Working Group approved paragraph 5.

#### *Paragraphs 6 and 7*

30. It was agreed that the word “interim” in paragraph 6 be deleted, as a decision on costs could be made as an award in the UARs. In the same context, it was agreed that the last part of paragraph should read “... form part of an award” to reflect the possibility of the Tribunal making multiple awards. The secretariat was requested to

ensure consistency throughout the DPs. Subject to those changes, the Working Group approved paragraphs 6 and 7.

#### *Success fees*

31. During the deliberations, a suggestion was made that DP9 should further address “success fees”, understood broadly to mean fees payable to the legal representatives based on the successful outcome of the proceeding.

32. One view was that there was no need to include an explicit reference to success fees in DP9, as the Tribunal had the discretion to consider whether such fees constituted “costs” and whether they were “reasonable” under subparagraph 2(d). It was observed that Tribunals would generally consider such fees as not falling under “costs” or being “unreasonable” and thus determine them to not be “recoverable”.

33. Another view was that clear guidance to the Tribunal would be useful and address concerns about success fees, particularly those types that were excessive and problematic – namely those that were of a pure reward nature and not based on the work performed by the legal representatives. It was suggested that this could be addressed in paragraph 2(d) or in paragraph 5.

34. In response to the latter view, it was said that not all forms of fees contingent on the outcome of the proceeding were problematic and that attempts to regulate success fees might merely change how such fees were structured, resulting in circumvention of the attempts to regulate them. It was further mentioned that in light of the various types of success fee arrangements, it would be difficult to include a clear definition. It was pointed out that in any case, only the portion of fees that was considered problematic should be excluded and not the entire fees just because some parts of the fees were contingent on the outcome.

35. After discussion, it was agreed that paragraph 2(d) would read: “The reasonableness of the costs claimed by the disputing parties considering, among others, the work performed as well as the difference between the costs claimed by each party”.

36. In light of the revisions to 2(d), it was questioned whether the exclusion of success fees from the costs of the proceeding needed to be expressly mentioned in paragraph 5. There was general support to exclude expenses incurred by a disputing party which amounted solely to a reward or bonus or to unreasonable remuneration depending on a successful outcome of the proceeding. Doubts were expressed about qualifying the outcome as “successful”, as it would be difficult to define. It was also said that reference should be made to the remuneration being unrelated to the number of hours worked or in excess of the work performed.

37. After discussion, it was agreed that paragraph 5 would read: “Expenses incurred by a disputing party that: (i) amount solely to a reward or bonus to its legal representatives based on the outcome of the proceeding and in excess of remuneration for the work performed; or (ii) relate to or arise from third-party funding, shall not be included in the costs of the proceeding.”

38. Subject to those changes (see paras. 35 and 37 above), the Working Group approved DP9.

#### **Draft Provision 10 – Counterclaim**

##### *Paragraph 1*

39. Diverging views were expressed with regard to paragraph 1. One view was that paragraph 1 adequately broadened the scope and types of counterclaims that could be brought by respondents, which would restore the balance in ISDS and promote the comprehensive resolution of disputes. Another view was that paragraph 1 might impair the equality of the disputing parties and that counterclaims should be more limited. Noting that DP 10 touched upon the issue of consent to jurisdiction, it was

said that its form as well as operation in the ICSID and other contexts needed to be carefully considered.

40. Regarding subparagraph (a), it was noted that the subparagraph provided safeguards that a counterclaim would not be disconnected from the initial claim by the claimant. It was suggested to only have one of the two conditions in subparagraph (a) or to have the two conditions apply cumulatively by replacing “or” with “and”. It was suggested that only the first phrase “arising directly out of the subject matter of the claim” be retained, which would align with the ICSID Rules. On the word “close”, while it was said that it could give rise to interpretative difficulties, there was support for its retention to qualify the connection with the factual or legal basis of the claim. It was said that “related with” would not sufficiently qualify the connection. It was suggested that, since the word “directly” was used in the first part, the word “direct” could be used in subparagraph (a) instead.

41. Regarding subparagraph (b), it was suggested that the subparagraph could be deleted as it was not necessary in view of the detail in subparagraph (a) and as obligations on the part of investors were generally not addressed through treaties. On the other hand, it was said that claimants should have clarity on the instruments that could form the basis of counterclaims against them. It was suggested that agreements between investors and local communities be included. Further, concern was expressed that the reference to “any other instrument binding on the claimant” was ambiguous and overly broad. It was said that if the phrase “any other instrument binding on the claimant” intended to cover future instruments that might contain new obligations binding on investors, it should be limited to where the respondent was a party to such an instrument. It was noted that the subparagraph, which allowed the respondent to raise a counterclaim based on an investment contract, might lead to an imbalance in light of DP15 (which would require a claimant to waive its right to raise or continue a proceeding based on the investment contract). It was said that DP10 and DP15 may need to be revisited after the form of the DPs were determined.

42. Views diverged on whether express reference should be made to “domestic law” in subparagraph (b). On the one hand, the significant role that domestic law played in ISDS was highlighted and reference was made to article 42(1) of the ICSID Convention, which allowed the Tribunal to apply domestic law in the absence of an agreement by the parties on the applicable law. It was further observed that domestic law constituted an important basis for counterclaims, and that retaining an express reference would be preferable as the absence thereof might result in Tribunals declining jurisdiction. It was mentioned that express reference to domestic law would not oblige respondent States to make counterclaims on that basis but would provide the possibility to do so. It was also mentioned that domestic law should be understood broadly to encompass the domestic law of the home State of the investor.

43. On the other hand, it was said that matters of domestic law should generally not be subject to the jurisdiction of the Tribunal, absent the consent of the disputing parties. It was said that the Tribunal might not have sufficient expertise to address matters of domestic law. It was further said that the reference to domestic law in subparagraph (b) could suggest that such law would become applicable to the proceeding, whereas it should be considered an issue of fact. In that context, it was suggested that an additional DP on applicable law could be developed to clarify these points.

44. Drafting proposals were made to clarify the sources of obligation. They included making a reference to the “respondent’s domestic law”, “any relevant investment contract or other instrument to which the respondent is a party”, “any legally binding instrument to which the respondent is a party” and “any legal instrument that binds the claimant to the respondent”. It was also suggested that reference could instead be made to the “rules of the law applicable to the substance of the dispute”.

45. After discussion, the Working Group approved paragraph 1, which would read as follows:

“1. Where a claim is submitted for resolution, the respondent may make a counterclaim:

(a) Arising directly out of the subject matter of the claim or in direct connection with the factual or legal basis of the claim; and

(b) That the claimant has failed to comply with its legal obligations to the respondent, including under any legally binding instrument to which the respondent is a party.”

*Paragraph 2*

46. Concerns were expressed that consent to the submission of counterclaims could not be deemed. It was said that such consent should fall within the scope of the instrument of consent rather than in procedural rules. It was also said that if consent were to be deemed, the respondent should be required to undertake certain procedural steps prior to raising the counterclaim. A question was raised on whether the deemed consent provisions would apply to investments made prior to the effective date of the DP or would only apply to investments made afterwards. Referring to article 46 of the ICSID Convention, it was suggested that the phrase “provided that such counterclaim is within the scope of the jurisdiction of the Tribunal” be added.

47. On the other hand, noting that tribunals had often dismissed counterclaims due to the lack of consent by the claimant, support was expressed for paragraph 2, as it ensured that the claimant’s submission of a claim constituted (or would be deemed to constitute) its consent to any counterclaims by the respondent as long as they were made in accordance with paragraph 1. It was said that this would address the issue of tribunals determining that they lacked the jurisdiction to hear counterclaims. It was further said that as the paragraph addressed consent to the jurisdiction, it should be formulated as a treaty provision. Subject to that understanding, the Working Group approved paragraph 2, unchanged.

*Paragraph 3*

48. In response to a concern that entrusting the Tribunal with full discretion on whether to permit delayed submission of a counterclaim could impede the procedural rights of the respondent, it was explained that paragraph 3 aimed to ensure the efficiency of the proceeding and that justification would only be necessary when the deadline was not met. The Working Group approved paragraph 3, unchanged.

*Paragraph 4*

49. It was questioned whether the respondent making a counterclaim should be subject to a rule akin to DP15, whereby it would have to waive its right to initiate or continue any adjudicatory dispute resolution proceeding with respect to the same subject matter. It was said that the objective would be to avoid parallel or subsequent proceedings. One view was that a respondent State should not be subject to such a rule and retain the power to hold an investor responsible. Another view was that the same “waiver” rule should apply and that DP15 should also address counterclaims. Yet another view was that it would be preferable for DP10 to contain all the rules relevant to counterclaims and further cater for the fact that counterclaims were being raised by respondent “States”.

50. A number of questions and suggestions were made as follows:

- Whether the first sentence should not be limited to where the respondent had initiated a “counterclaim” in another proceeding but should also apply when it had raised a “claim”;
- Whether the waiver would apply to all possible remedies available under domestic law that formed the basis of the counterclaim, including, for example, the right to pursue criminal proceedings;

- Whether the waiver would apply to instances where the respondent raised the issue as a defence or relied on a claim for the purposes of set-off;
- Whether the phrase “the same claim” at the end of the second sentence should be replaced with the phrase “the same subject matter”;
- The consequences of a possible dismissal of the counterclaim by the Tribunal, including due to the lack of jurisdiction, would need to be addressed;
- The consequence of a withdrawal of the counterclaim or the other adjudicatory process would need to be addressed;
- The ways in which a State would waive its right could be further specified.

51. After discussion, it was agreed that paragraph 4 would be deleted and that DP15 be developed to also apply to counterclaims, taking into account the above-mentioned points (see para. 50 above).

### **Form and implementation of the draft provisions**

52. Recalling that the Working Group had agreed to reflect on the form of the DPs and their means of implementation (including their interaction with underlying investment agreement), it engaged in a preliminary discussion on those issues in light of the matters that were identified during the session.

53. It was suggested that the DPs could be presented as model treaty provisions or, in the alternative, as treaty provisions in a protocol to the multilateral instrument on ISDS reform (MIIR) with built-in optionality. Another suggestion was that the DPs could be grouped, with some taking the form of procedural rules and others taking the form of treaty provisions. Another view was that all the DPs should take the form of treaty provisions forming a protocol to the MIIR.

54. On the possible grouping of the DPs, different suggestions were made on which DPs should be formulated as procedural rules. In this regard, references were made, in particular, to DPs 1–9, 11, 12 and possibly 21 and 22. It was suggested that such DPs could be formulated as a set of rules supplementing the UARs, similar to the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (the “Transparency Rules”). It was said that incorporation of such DPs in a treaty might not achieve the intended uniformity, as implementation would largely depend on States’ level of adoption. It was also said that it could take longer to achieve the intended impacts of reform and that such an approach could disrupt the application of an otherwise cohesive set of arbitration rules. It was pointed out that procedural rules might be easier to amend or update and could ensure closer alignment with the ICSID Rules, promoting coherence. It was said that the entire set of rules supplementing the UARs could later be transformed to form part of a protocol to the MIIR. It was said that the DPs as a supplement to the UARs could apply to other institutional rules, as well as other types of investment disputes beyond treaty-based ISDS.

55. However, concerns were raised regarding the DPs being prepared to supplement the UARs, as this could harm the integrity of the UARs, which were generic in nature and also applied to commercial arbitration. In response, it was clarified that the DPs as a supplement to the UARs would necessarily be limited to ISDS. It was also suggested that parties should be able to choose the supplementary rules to the UARs without being bound by a specific version of the UARs and that the application of the supplementary rules should require the consent of the disputing parties.

56. In support for preparing all the DPs in the form of treaty provisions, it was said that such an approach would ensure coherence and consistency, as they would apply regardless of the applicable procedural rules and some might also be relevant to the standing mechanism. It was said that preparing treaty provisions would deliver on one of the key aims of the reform, which was to provide a mechanism for States to update their treaties. Conversely, updates to the UARs might have limited impact. It was said that the provisions addressing the conduct of the proceedings could later be transformed into procedural rules.

57. It was suggested to identify core or mandatory provisions, which the Contracting Parties to the MIIR would not be able to derogate from or the disputing parties would not be able to vary by agreement. It was further suggested that conflict rules addressing the interaction with provisions in existing investment agreements would need to be prepared. It was observed that fragmentation might be inevitable, as the reform process would necessarily involve States gradually opting into those provisions and as the MIIR would only provide the mechanism to amend treaties but not contracts or domestic legislation.

58. It was generally felt that regardless of the form, States should be provided with the necessary flexibility to choose the DPs that they wished to apply and that optionality should be a key feature in their implementation. However, it was also said that the extent of optionality should be such that it does not lead to further fragmentation. It was suggested that optionality within a specific DP should be avoided.

59. Noting that the preparation of the DPs as procedural rules and as treaty provisions were not mutually exclusive, the Working Group agreed to prepare the DPs as treaty provisions. It was also agreed that the DPs addressing the conduct of the proceedings (DPs 1–9, 11, 12 and possibly parts of 13, 21 and 22, but not 11 bis and 12 bis) would form: (i) a supplement to the UARs; and (ii) part of a protocol to the MIIR as a set of rules which States could opt into as one package. It was said that the preparation of a supplement to the UARs would require a careful assessment of how the DPs as supplementary rules would interact with the UARs. It was agreed that other DPs, which provided purely treaty language, would be presented as separate provisions in a protocol to the MIIR for States to opt into individually.

60. A number of suggestions were made on how to prioritize the work. One view was that the DPs to supplement the UARs should be considered first as many of them were close to being finalised. Another view was that treaty provisions deserved prior focus and attention. It was agreed that depending on the progress made, the Working Group could take a decision on the sequencing of its work with the aim of identifying what it wished to present to the Commission (see paras. 107–112 below). On a broader note, the need to deliver effective ISDS reform was underlined.

#### **Draft Provision 11 – Consolidation and coordination of arbitrations**

61. In response to a suggestion that DP11 should introduce requirements to ensure due process and not to prejudice any disputing parties, it was explained that the DP provided a mechanism to consolidate or coordinate arbitral proceedings based on all of the parties' consent. The necessity of the second sentence in paragraph 2 was questioned, as different respondents might also consent to consolidation or coordination. Subject to the deletion of that sentence, the Working Group approved paragraphs 1 to 3.

62. It was explained that paragraph 4 provided safeguards to ensure that the proposed terms of consolidation or coordination could be implemented by requiring that the Tribunals were presented with and consulted on such terms (for example, on whether the consolidated arbitration could be administered under a specific rule or institution). It was suggested that paragraph 4 be revised to cater for circumstances where all parties consented to consolidation or coordination before the constitution of one or both of the Tribunals, in the interest of efficiency. It was also pointed out that the Tribunal constituted to handle the consolidated or coordinated arbitration could address any issues that arise.

63. After discussion, the Working Group approved paragraph 4, subject to amending the first and second sentences to read as follows: "... to any tribunal constituted in the arbitration or any relevant institution. They shall also consult with those tribunals and institutions to ensure ...".

**Draft Provision 11 bis – Consolidation**

64. It was explained that whereas DP11 relied entirely on all of the disputing parties' consent to consolidate or coordinate arbitral proceedings, DP11 bis provided the possibility for one of the parties to seek a consolidation order. It was suggested that the titles for DP11 and DP11bis could eventually be revised to reflect this difference.

65. There was support for developing DP11 bis as a treaty provision, as it would make it possible to consolidate proceedings administered under different arbitration rules and could enhance efficiency. While noting that DP11 and DP11 bis were complementary and should be developed together, the Working Group agreed to consider DP11 bis at a later stage.

**Draft Provision 12 – Third-party funding**

66. Recalling the diverging views that had been expressed with regard to the regulation of TPF, it was explained that DP12 presented a compromise reflecting the discussions that took place at the ninth intersessional meeting in Santiago (see [A/CN.9/WG.III/WP.263](#), paras. 114–118). It was further explained that while the DP took reference from ICSID Rules 14, it departed from the rule in certain aspects.

*Paragraph 1*

67. Regarding the definition of TPF, it was suggested that intra-corporate funding should be excluded from the scope of TPF and as such, “non-party” should be limited to those “not affiliated with the disputing party”. That suggestion did not receive support. It was further clarified that the current definition would include a situation where the disputing party's legal representative was the party that provided the funds. The Working Group approved paragraph 1, unchanged.

*Paragraph 2*

68. Diverging views were expressed with regard to the extent of information that the funded party was required to disclose under paragraph 2.

69. One view was that the scope of information to be disclosed should be limited to those in subparagraphs (a) and (b), to be consistent with ICSID Rules 14 and to avoid fragmentation through different standards. In support, it was said that the disclosure of such information would be sufficient to address any conflicts of interest and that the Tribunal could have the discretion to require additional information when necessary. It was observed that the objectives to be achieved by subparagraphs (d) to (f) were unclear. It was also mentioned that not all the information listed in paragraph 2 might be available to the funded party and that the required information should be clearly stated to reduce the burden of disclosure. It was also suggested that subparagraphs (c) to (f) should be moved into paragraph 3 instead.

70. Another view was that there was a need to ensure broad disclosure, including all the information listed in paragraph 2. In support, it was stated that the disclosure requirements did not only aim to address conflicts of interest but also broader concerns expressed about TPF. References were made to, for example: (i) where the respondent was not able to recover costs from an impecunious claimant funded by a third-party funder; (ii) where a third-party funder benefitted financially from the proceeding despite not being a party to the proceeding; and (iii) the existence of TPF possibly hindering amicable settlement. Calls were made in support of greater transparency, including with regard to the corporate structure of third-party funders. It was also said that the disclosure of certain information in paragraph 2 was required for the operation of other DPs, for example, on security for costs and allocation of costs.

71. While it was suggested that the information required in paragraph 2 should also be made public, possibly using the mechanism provided for in the Transparency Rules, it was explained that the disclosure of such information was subject to the applicable rules as provided for in paragraph 6. It was noted that paragraph 6 provided

the Tribunal with discretion to make public any information disclosed, and that this enabled accommodation of the disclosed information possibly being sensitive in nature (see para. 90–92 below).

72. While suggestions were made to regulate TPF further (to ensure the reasonableness of the conditions for TPF or to require that the Tribunal order the third-party funder to pay adverse costs), it was observed that they could be considered in the context of DP12 bis.

73. With regard to subparagraph (b), suggestions were made to clarify: (i) the meaning of “beneficial owner”, possibly replacing it with other terminology (e.g. “effective beneficiary”); and (ii) the meaning of a “person with decision-making authority ... in relation to the proceeding”, as both might be difficult for the funded party to identify. In response, it was said that it would be the responsibility of the funded party to seek such information from the third-party funder.

74. It was explained that subparagraph (f) had been revised to address the concern that the amount or rate of remuneration might be privileged information. The focus was therefore on whether such remuneration was dependent on the outcome, to assist in determining the extent to which the third-party funder had an interest or control over the proceeding. It was suggested that subparagraphs (d) and (e) should be revised so that the information to be provided by the funded party was “whether the third-party funder had any right to terminate the agreement” and “whether the third-party funder had any right to make decisions regarding the management of the proceeding”.

75. After discussion, the Working Group approved paragraph 2, replacing the word “cover” in subparagraph (c) with “pay” and reformulating the structure of subparagraphs (d) and (e) to follow that of subparagraphs (c) and (f). The secretariat was further tasked to clarify phrases such as “beneficial owner” and “management of the claim or the proceeding”.

### *Paragraph 3*

76. Concerns were expressed that the non-exhaustive list of information, for which the Tribunal could order disclosure, would lead to orders to disclose privileged or confidential information. The suggestion to delete paragraph 3 altogether did not find support. It was suggested that the approach in ICSID Rules 14(4) be followed, and to provide only that the Tribunal could order the disclosure of further information regarding the funding agreement and third-party funder, if it deemed it necessary at any stage of the proceeding, without further elaboration. Accordingly, it was suggested that subparagraphs (b) and (d) be deleted. In response, it was stated that paragraph 3 and its subparagraphs provided guidance to the Tribunal, which had the discretion to request disclosure of any such information under the applicable rules.

77. While doubts were expressed about the phrase “upon the request of a disputing party or on its own initiative” in the chapeau, it was explained that the phrase clarified how the Tribunal would initiate the disclosure process and that the other disputing party would have a right to make a request. It was suggested that the chapeau should clarify that the disclosure was to be made to the Tribunal and the other disputing party in line with paragraph 2. While it was also suggested that information should be disclosed only to the Tribunal (as disclosure to the other party risked revealing sensitive business information or business confidential to them), there was no support for that suggestion.

78. Regarding subparagraph (a), it was said that the phrase “further information” was too vague. In response, it was said that the Tribunal’s assessment of the relevance of the information would safeguard against the risk of overly broad disclosure. It was suggested that the disclosure of the “terms of the funding agreement” be made mandatory. This did not receive support.

79. Views diverged on whether subparagraph (b) should be retained.

80. Regarding subparagraph (c), diverging views were expressed on whether the number of other claims funded by the third-party funder against the respondent should be the subject of disclosure. One view was that such disclosure was unnecessary as the information would not inform the Tribunal of possible conflicts of interest or other inappropriate conduct. It was also said that such information might not be available to the funded party and, in any event, could be discerned by the other party subject to the multiple claims. Another view was that such disclosure was appropriate and not onerous, as it only addressed the number of claims and did not pertain to the nature or the entire list of the claims. It was said that multiple claims against the same State were relevant for determining any conflict of interest. It was further said that multiple claims could result in regulatory chill, put pressure on the respondent State to change its policy, or hamper the amicable settlement of the dispute, and should be discouraged. It was suggested that claims should be limited to “related investment” claims. It was further suggested to use the term “proceedings” instead of “claims” to align with the definition of TPF in paragraph 1. While it was also suggested that the phrase “or its related entities” be deleted, it was explained that the phrase would address instances where the third-party funder provided funds indirectly, including through a special purpose vehicle.

81. Regarding subparagraph (d), it was suggested that the “necessity” requirement therein should apply to the other subparagraphs. It was also suggested that the standard for requiring disclosure should refer to the information being “relevant” or “material”. It was, however, said that “necessity” encompassed relevance and materiality. It was also said that the threshold for the Tribunal requesting disclosure should be the similar to that required for other evidence (for example, ICSID Rules 36(3), UARs 27 and DP1).

82. After discussion, the Working Group approved paragraph 3 as follows (with subparagraphs (a) and (b) unchanged):

“Upon the request of a disputing party or on its own initiative, the Tribunal may, if it considers necessary, require the funded party to disclose, to the Tribunal and the other disputing party, information such as:

(a) ...;

(b) ...; and

(c) The number of other proceedings funded by the third-party funder or its related entities against the respondent.”

#### *Paragraph 4*

83. It was suggested that paragraph 4 should not rely on terminology in the UARs (notice of arbitration and response thereto) but instead refer to more generic terms such as “when initiating the proceeding”, so that the paragraph could operate under all applicable rules, including those for a standing mechanism. It was noted that any revised text should take into account that the respondent might be a funded party.

84. Noting that paragraph 2 referred to the disclosure of information to the Tribunal and to the other disputing party, it was suggested that the first sentence of paragraph 4 address the time frames for disclosure to, respectively, the other disputing party and the Tribunal. It was stated that disclosure of the information prior to the constitution of the Tribunal could ensure that conflicts of interest were avoided in the appointment of arbitrators. In addition, it was said that the information should be disclosed to the Tribunal as soon as it was constituted.

85. It was observed that when requiring disclosure under paragraph 3, the Tribunal would specify the time period within which the information should be disclosed and, as such, the second sentence of paragraph 4 was not necessary.

86. After discussion, the Working Group approved paragraph 4 as follows, to be placed after paragraph 2:

“The funded party shall disclose the information listed in paragraph 2 to the other disputing party, when the recourse to arbitration is initiated or, if the funding arrangement is entered into afterwards, immediately thereafter. The funded party shall disclose the information listed in paragraph 2 to the Tribunal as soon as it is constituted or, if the funding arrangement is entered into afterwards, immediately thereafter.”

#### *Paragraph 5*

87. It was suggested that the reference to information disclosed in accordance with “paragraph 3” be deleted, as the Tribunal could exercise its discretion in deciding the terms of the disclosure, including any action to be taken when there was new information or any change in the disclosed information. The suggestion did not receive support.

88. It was noted that the funded party might not always be in a position to be aware of new information or any change in the information disclosed in accordance with paragraphs 2 and 3 and that flexibility should be provided to the funded party on when they had to disclose such information under paragraph 5. It was generally felt that the phrase “as promptly as possible”, which was different from “immediately” in paragraph 4, provided adequate flexibility.

89. After discussion, the Working Group approved paragraph 5, unchanged.

#### *Paragraph 6*

90. Diverging views were expressed over whether paragraph 6 should be retained. It was noted that paragraph 6 merely referred to the applicable rules, and existing rules on disclosure of information could apply regardless of paragraph 6. It was also said that existing rules rarely dealt with information regarding TPF. It was suggested that information disclosed under paragraph 3 should be subject to confidentiality. It was suggested that measures should be put in place to prevent confidential or protected information from being made public.

91. In support of retaining paragraph 6, it was observed that the rule therein reflected the public interest in the proceeding and the need for transparency, including to facilitate the study and understanding of TPF and its impact on ISDS. It was mentioned that under article 3(3) of the Transparency Rules, when applicable, the information disclosed in accordance with DP12 could be made public as “any other documents provided to the arbitral tribunal”. It was suggested that the Tribunal should make the information public only after consulting the parties. It was clarified that the reference to “applicable rules” meant that information could be made public only where such publication was allowed under the applicable rules.

92. After discussion, it was agreed that paragraph 6 should read as follows:

“The Tribunal may, after consulting the disputing parties, make public any information disclosed pursuant to paragraphs 2 to 5 in accordance with the applicable rules, and shall make arrangements to prevent any confidential or protected information from being made available to the public.”

#### *Paragraph 7*

93. There was general support for including a list of possible sanctions for non-compliance with disclosure obligations. It was widely felt that the Tribunal should be able to take any appropriate remedy (as provided for in subparagraph (d)), while an indicative list (using the phrase “including” or “such as”) could provide further guidance. Concerns were expressed as to whether the term “measure” could include the drawing of an adverse inference. Concerns were also expressed that the term “may” in the chapeau might give too much discretion to the Tribunal, including not to take any measure. It was suggested that the Tribunal should be mandated to take action, while it would be left to the Tribunal to choose the most appropriate course of action, without necessarily suggesting an order of priority among the

measures. Noting that the procedural rules refer to “interim measures”, it was confirmed that the use of the term “measure” was sufficiently broad.

94. Regarding subparagraph (a), it was noted that the Tribunal could order security for costs in accordance with DP5, paragraphs 6 to 9 and that paragraphs 1 to 5 would not apply. It was further clarified that DP5, paragraph 8 addressed the non-compliance by a disputing party with an order to provide security for costs, which was distinct from non-compliance with disclosure obligations.

95. Regarding subparagraph (c), it was suggested that the Tribunal may suspend the proceeding and may, only after a certain period of time, terminate the proceeding after consulting the parties.

96. It was noted that Tribunal members had a continuing obligation to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality and independence under UARs 11 and similarly any financial, business, professional or close personal relationship in the past five years with a third-party funder under article 11(2)(a) of the UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution.

97. After discussion, the Working Group approved paragraph 7 as follows:

“If the funded party fails to comply with the disclosure obligations in paragraphs 2 to 5, the Tribunal shall take any appropriate measure, such as:

(a) Order security for costs in accordance with Draft Provision 5, paragraphs 6 to 9;

(b) Take the failure into account when allocating costs in accordance with Draft Provision 9; and

(c) Suspend the proceeding with respect to that party’s claim. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting the disputing parties, order the termination of the proceeding.”

#### **Draft Provision 22 – Submission by a non-disputing Treaty Party**

98. Views diverged on the desirability of developing a rule on the submission by a non-disputing Treaty Party (NDTP).

99. One view was that such a rule was not necessary as NDPT submissions were already addressed in article 5 of the Transparency Rules and ICSID Rules 68. It was said that the DP did not address any gap, as States could address the issues of treaty interpretation through, for example, joint interpretations. Concerns were expressed about the additional burden and re-politicization of treaty-based investment disputes arising from NDTP submissions. Another view was that NDTP submissions could further ensure consistent interpretation of underlying treaties. It was further said that issuing joint treaty interpretations could often be hampered by a non-alignment of views between the Parties to the treaty, and that NDTP submissions provided an alternative mechanism to address issues of treaty interpretation.

100. Noting that NDTP submissions were addressed in the Transparency Rules and the ICSID Rules, there was support for developing DP22 as a rule to supplement the UARs. However, it was said that States should have full flexibility on whether to apply DP22 and that it would be better presented as an optional treaty provision.

101. After discussion, the Working Group agreed to develop DP22 as an optional treaty provision. In that context, a suggestion was made that the DP could be reformulated to address the rights and obligations of the treaty parties rather than the conduct of the Tribunal.

102. Noting that paragraphs 1 and 2 and 4 to 6 of DP22 were based on article 5 of the Transparency Rules, the Working Group approved those paragraphs, unchanged. With regard to paragraph 1, it was explained that the possibility of a disputing party

making a request for an NDTP submission through the Tribunal was already envisaged.

103. A number of suggestions were made to paragraph 3, which was based on ICSID Rules 68(3). The significance of paragraph 3 as a basis for an effective NDTP submission was underlined. It was explained that the inclusion of paragraph 3 was necessary as the NDTP would need to have sufficient information and context of the dispute (including essential documents) to decide whether to make a submission and what to address in a submission. It was further explained that a similar provision was not necessary in article 5 of the Transparency Rules, as the Rules as a whole provided the framework for providing an NDTP with the necessary documents.

104. It was said that a disputing party should not have the authority to prevent the information being provided to the NDTP by mere objection. While concerns were expressed about departing from ICSID Rules 68(3), it was generally felt that, as long as there was a mechanism to safeguard confidential and protected information, a disputing party should not be given such authority. It was further noted that as a treaty provision, disputing parties would not be able to derogate from DP22 as was the case for ICSID Rules 68(3). In support, suggestions were made to refer to article 7 of the Transparency Rules or to replace the phrase “unless a disputing party objects” with the phrase “with the exception of any confidential or protected information”. It was also suggested that the Tribunal should be required to make arrangements to protect confidential or protected information, while it would be possible for the disputing parties to agree that such arrangements were not necessary. While a suggestion was made to refer to the applicable rules to determine the scope of confidential or protected information, it was viewed that this was not necessary and discretion should be left to the Tribunal.

105. After discussion, the Working Group approved DP22 with paragraph 3 revised as follows: “The Tribunal shall provide the non-disputing Treaty Party with relevant documents filed in the proceeding, and unless the disputing parties agree otherwise, shall make arrangements to protect any confidential or protected information.”

#### **Draft Provision 13 – Amicable settlement**

106. While general support was expressed for DP13, a number of suggestions were made. One was that paragraph 1 should clarify that amicable settlement was available at any time, including after the commencement of arbitral proceedings and that the multiple types of amicable settlement can be utilized at the same time. While there was support for that suggestion, it was questioned how to convey that notion in light of paragraph 3, which required amicable settlement as a condition for submitting a claim. It was suggested that the DP should be separated into two parts, one part exhorting the use of amicable settlement generally and another part specifically setting forth the necessary steps required prior to the commencement of a claim or proceeding. The Working Group agreed to further consider the drafting in this respect. It was also mentioned that DP13 should be presented as a treaty provision as paragraph 3 touched upon the conditions for submitting a claim.

### **C. Way forward**

107. The Working Group engaged in a discussion on the way forward, including the sequencing of its work. While noting the importance of continuing to work on treaty-only-type provisions (including DP 20 on damages), it was generally felt that work should first be carried out to finalize the DPs addressing the conduct of the proceedings (specifically DPs 1 to 9, 11 and 12), so that they could be presented to the Commission. Noting that the Working Group did not have time to consider DPs 1 to 8 (which had few remaining issues) at the current session, the Working Group considered possible ways to finalize that work.

108. It was recalled that the Working Group, at its fifty-second session in September 2025, had decided that its fifty-fourth session in March 2026 would be devoted

entirely to the statutes of the standing mechanisms. Accordingly, the following possibilities were presented and discussed: (i) making a request to the Commission that an additional session of the Working Group be held prior to the Commission session by utilizing any of its remaining conference resources; (ii) making a request to the Commission that sufficient time be allocated for the consideration and finalization of the DPs; (iii) carrying out the work through informal meetings; and (iv) presenting to the Commission a subset of the DPs intended to be presented first.

109. It was considered that presenting a subset or parts of the DPs was not preferable as it might result in preliminary discussions at the Commission. Doubts were also expressed about holding informal meetings, as they might not ensure inclusiveness and as no decisions can be made at such meetings to further progress.

110. There was support for requesting additional conference resources to hold an additional session of the Working Group, possibly in April 2026 using the conference time allocated to Working Group VI. It was explained that Working Group VI had completed its mandated work in December 2025 and would not need to hold its session scheduled prior to the Commission. It was suggested that an additional session would allow Working Group III to review the DPs intended to be presented first and present a full set of those DPs for consideration by the Commission. In support, it was said that it would not be realistic to have the DPs in their current form presented to the Commission, as additional time would be required for the Commission to adopt the DPs. It was suggested that if an additional session of Working Group III could be held, how the DPs would be presented as a supplement to the UARs and in the protocol to the MIIR could be further discussed.

111. Nonetheless, concerns were expressed about the extent of conference resources being utilized by the Working Group and the burden put on delegates to travel for and take part in formal meetings, particularly in light of the fifty-fourth session already scheduled for March 2026. To alleviate such burden, it was suggested that the additional session be held in a format which would allow active remote interventions. In response, it was explained that this would be difficult due to budget and administrative constraints. It was stated that the holding of an additional session should not be to the detriment of other Working Groups and that the Commission should take an informed decision on how best to utilize its resources. In that context, the Working Group was informed about ongoing discussions on how to effectively use Commission resources, which included a proposal to have a reduced annual session.

112. After discussion, the Working Group requested that sufficient time be allocated during the fifty-ninth Commission session to finalize the DPs. Noting that the other Working Groups have yet to meet in the first half of 2026, it was noted that it would be premature to discuss the agenda of the upcoming Commission session. In that context, the secretariat was requested to consult conference management services on whether any remaining Working Group conference resources could be utilized to hold an extended Commission session and to provide an update to the Working Group.

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