



General Assembly

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**United Nations Commission on
International Trade Law
Working Group III (Investor-State Dispute
Settlement Reform)
Thirty-seventh session
New York, 1–5 April 2019**

Annotated provisional agenda

I. Provisional agenda

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Possible reform of investor-State dispute settlement (ISDS).
5. Other business.
6. Adoption of the report.

II. Composition of the Working Group

1. The Working Group is composed of all States members of the Commission, which are the following: Argentina (2022), Armenia (2019), Australia (2022), Austria (2022), Belarus (2022), Brazil (2022), Bulgaria (2019), Burundi (2022), Cameroon (2019), Canada (2019), Chile (2022), China (2019), Colombia (2022), Côte d'Ivoire (2019), Czechia (2022), Denmark (2019), Ecuador (2019), El Salvador (2019), France (2019), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2022), Indonesia (2019), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2019), Kenya (2022), Kuwait (2019), Lebanon (2022), Lesotho (2022), Liberia (2019), Libya (2022), Malaysia (2019), Mauritania (2019), Mauritius (2022), Mexico (2019), Namibia (2019), Nigeria (2022), Pakistan (2022), Panama (2019), Philippines (2022), Poland (2022), Republic of Korea (2019), Romania (2022), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2022), Sri Lanka (2022), Switzerland (2019), Thailand (2022), Turkey (2022), Uganda (2022), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2022), Venezuela (Bolivarian Republic of) (2022) and Zambia (2019).

2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where

the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

III. Annotations to agenda items

Item 1. Opening of the session

3. The thirty-seventh session of the Working Group will be held at the United Nations Headquarters, New York, from 1–5 April 2019. Meeting hours will be from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m., except on Monday, 1 April 2019, when the session will be opened at 10.30 a.m.

Item 2. Election of officers

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

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

(a) Previous deliberations

5. At its fiftieth session, the Commission had before it Notes by the Secretariat on possible future work in the field of dispute settlement: concurrent proceedings in international arbitration ([A/CN.9/915](#)); ethics in international arbitration ([A/CN.9/916](#)); and reforms of investor-State dispute settlement (ISDS) ([A/CN.9/917](#)). Also, before it was a compilation of comments by States and international organizations on investor-State dispute settlement framework ([A/CN.9/918](#) and addenda).

6. Having considered the topics in documents [A/CN.9/915](#), [A/CN.9/916](#) and [A/CN.9/917](#), the Commission entrusted Working Group III with a broad mandate to work on the possible reform of investor-State dispute settlement (ISDS). In line with the UNCITRAL process, Working Group III would, in discharging that mandate, ensure that the deliberations, while benefiting from the widest possible breadth of available expertise from all stakeholders, would be government-led with high-level input from all governments, consensus-based and be fully transparent. The Working Group would proceed to: (i) first, identify and consider concerns regarding ISDS; (ii) second, consider whether reform was desirable in light of any identified concerns; and (iii) third, if the Working Group were to conclude that reform was desirable, develop any relevant solutions to be recommended to the Commission. The Commission agreed that broad discretion should be left to the Working Group in discharging its mandate, and that any solutions devised would be designed taking into account the ongoing work of relevant international organizations and with a view of allowing each State the choice of whether and to what extent it wishes to adopt the relevant solution(s).¹

7. The Commission has also decided to retain two related topics in the field of investment arbitration on its agenda for further consideration: possible future work on concurrent proceedings and on ethics for arbitrators.² The Commission may consider whether to mandate a working group to undertake work in either or both of them at a future time.³

8. At its thirty-fourth to thirty sixth sessions, the Working Group considered work on possible reform of investor-State dispute settlement (ISDS) on the basis of a Notes by the Secretariat and submissions from International Intergovernmental Organizations and States. The deliberations and decisions of the Working Group on the work of its thirty-fourth to thirty-sixth sessions are set out documents

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

² *Ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 175–186.

³ *Ibid.*, para. 195.

[A/CN.9/930/Rev.1](#) and [A/CN.9/930/Add.1/Rev.1](#); [A/CN.9/935](#); and [A/CN.9/964](#), respectively).

9. At its fifty-first session, the Commission, taking note of the progress made by the Working Group, expressed its satisfaction with the progress made and the support provided by the Secretariat. The Commission noted that the Working Group would continue its deliberations pursuant to the mandate given to it, allowing sufficient time for all States to express their views, but without unnecessary delay.⁴ In that context, the Commission expressed its appreciation for the contributions to the UNCITRAL Trust Fund from the European Union and the Swiss Agency for Development and Cooperation, aimed at allowing participation of developing States in the deliberations of the Working Group, and ongoing efforts by the Secretariat to secure additional voluntary contributions. The Commission also welcomed the outreach activities of the Secretariat aimed at raising awareness about the work of the Working Group, and ensuring that the process would remain inclusive and fully transparent. The Commission further expressed its appreciation for the provision of information to assist the Working Group in its deliberations from various stakeholders, as well as for proposals by an Academic Forum and a Group of Practitioners to make information from their research and experience available to the Working Group. Lastly, the Commission welcomed the invitation of the Republic of Korea to an intersessional regional meeting on ISDS reform (held in Incheon, Republic of Korea, on 10 and 11 September 2018).⁵

10. At its thirty-seventh session, the Working Group is expected to consider the issue of third-party funding in international arbitration on the basis of a note by the secretariat ([A/CN.9/WG.III/WP.157](#)). Further the Working Group is expected to develop a work plan to address the concerns for which it had decided that reform by UNCITRAL was desirable, on the basis a note by the Secretariat addressing framework for discussion ([A/CN.9/WG.III/WP.149](#)) as well as submissions by States (as contained in documents [A/CN.9/WG.III/WP.156](#), [A/CN.9/WG.III/WP.159](#) and its addenda).⁶ The Working Group will have before it a note by the Secretariat to consider options available to facilitate implementation of the work plan to be developed ([A/CN.9/WG.III/WP.158](#)). The Working Group will also have before it a report on the second intersessional regional meeting on ISDS reform, to be held in Santo Domingo, Dominican Republic, on 13 and 14 February 2019 ([A/CN.9/WG.III/WP.160](#)).

(b) Documentation

11. The Working Group will have before it documents [A/CN.9/WG.III/WP.149](#), [A/CN.9/WG.III/WP.156](#), [A/CN.9/WG.III/WP.157](#), [A/CN.9/WG.III/WP.158](#), [A/CN.9/WG.III/WP.159](#) and addenda, as well as [A/CN.9/WG.III/WP.160](#), referred to in para. 10 above.

12. A limited number of the following background documents will be made available at the session:

- Reports of the United Nations Commission on International Trade Law on the work of its forty-eighth session (*Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/70/17)*); forty-ninth session (*Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)*); fiftieth session (*Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*); and fifty-first session (*Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*);
- Reports of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fourth session ([A/CN.9/930/Rev.1](#) and

⁴ Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 145.

⁵ Ibid., paras. 142–144 and 146.

⁶ [A/CN.9/964](#), para. 138.

A/CN.9/930/Add.1/Rev.1); thirty-fifth session (A/CN.9/935); and thirty-sixth session (A/CN.9/964);

- Documents A/CN.9/WG.III/WP.150, A/CN.9/WG.III/WP.151, A/CN.9/WG.III/WP.152, A/CN.9/WG.III/WP.153, which respectively provide background information on (i) consistency, including coherence, predictability and correctness of the outcome of ISDS, (ii) arbitrators and decision-makers, and (iii) costs and duration; and document A/CN.9/WG.III/WP.154, a report of the first intersessional regional meeting on ISDS reform, held in Incheon, Republic of Korea, on 10 and 11 September 2018.

13. UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

Item 5. Adoption of the report

14. The Working Group may wish to adopt, at the close of its session, a report for submission to the fifty-second session of the Commission, scheduled to be held in Vienna, from 8 to 26 July 2019. The main conclusions reached by the Working Group at its ninth meeting (on Friday morning) will be summarily read out for the record at the tenth meeting (on Friday afternoon) and subsequently incorporated into the report.

IV. Scheduling of meetings

15. The thirty-seventh session of the Working Group will last for five working days. There will be ten half-day meetings available for consideration of the agenda items. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,⁷ the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with a draft report on the entire period being prepared by the Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).

16. The Working Group may wish to note that its thirty-eighth session is scheduled to be held in Vienna, from 14-18 October 2019, subject to confirmation by the Commission at its fifty-second session.

⁷ Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), para. 381.