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Dear representatives of Working Group III,

I have the honor to write to you in accordance with a decision taken by the Commission at its fifty-fourth session (2021) regarding the upcoming forty-second session of the Working Group III that will be held from 14 to 18 February 2022. The Commission had agreed to extend the arrangements made with regard to the format, officers and methods of work of the UNCITRAL working groups during the coronavirus disease 2019 (COVID-19) pandemic ([A/CN.9/1038, Annex I](#)) until its fifty-fifth session in 2022.

I have been informed that, as of now, arrangements are being made to allow delegations to participate in the session in person at the United Nations Headquarters in New York (conference room 4) as well as remotely via the online platform Zoom. Due to the limitations in place at the United Nations Headquarters, in-person participation will be restricted to State delegations only (one per State), who should be in touch with their respective Permanent Missions as soon as possible to be issued a pass to enter the premises. However, please note that these arrangements may be subject to change or further restriction depending on the situation at Headquarters in the coming weeks. For online participation, delegations will need to sign up and possess a Zoom account in order to access the platform.

I will take steps to ensure an inclusive and transparent approach and adjust the pace and organization of the session to accommodate remote participation, especially as delegations may face technological difficulties. Considering the limited time allocated for the session, I would urge delegations to make concise interventions not exceeding five (5) minutes and also to make appropriate use of the chat and other functions available on Zoom. This will ensure that we make efficient use of the resources available to the Working Group.

The provisional agenda for the session ([A/CN.9/WG.III/WP.211](#)) is available on the [website of Working Group III](#). I have received comments on a possible specific schedule pursuant to this provisional agenda from a number of delegations already. It is clear that views differ with respect to how to use our time at the upcoming session. It is also clear to me that we must be guided both by the need to use our Working Group time in the most effective and efficient way possible to meet our goals, while at the same time progressing our work on the basis of our prior agreements to ensure breadth, inclusivity and a respect for the consensus-based decisions we have reached in the past. We must also move forward in a way that takes account of the fact that we continued to be impacted in unexpected ways by the pandemic.

Accordingly, having fully considered the positions expressed and in light of all of the above, I propose the following way forward. In accordance with the workplan ([A/CN.9/1054, Annex](#)), I would suggest that we devote the first two and a half days (five meetings of 2 hours, total of 10 hours) to the discussion of the standing multilateral mechanism - selection and appointment of ISDS tribunal members and related matters (document A/CN.9/WG.III/WP.213). I note that this does take time away from the planned three days for the standing mechanism, and hence, we will need to find extra time in our schedule

for this subject later.

I suggest that we then devote the next two and a half days of the session (five meetings of 2 hours each, total of 10 hours) to completing the first reading of the draft code so that we can present it to the Commission at its fifty-fifth session this summer as called for in the workplan. In total, this will mean that we will have had 30 hours of Working Group time to review the Code. In addition, I note that if we meet our goal of presenting the Code to the Commission, it will be fully considered by the Commission at its upcoming session this summer. Since the draft code of conduct is a joint project by the ICSID and UNCITRAL Secretariats you are invited, when composing the delegation, to take account of the needed expertise regarding also the ICSID process.

If I do not receive any objection or alternative proposals on the above-mentioned agenda by 8 February 2022, the agenda will be considered adopted at the beginning of the session on 14 February 2022.

As to the organization of the session, I hope that the following arrangements, made in consultation with the Secretariat in the light of the means currently available, will be agreeable to you.


- Meetings will be held from 14 February (Monday) to 18 February (Friday).
- The meeting hours will be 10:00 to 12:00 and 16:00 to 18:00 New York (Eastern Standard Time).

I am aware of the challenges that will be presented by these times for some delegations, and confirm that I will take whatever steps I can in these difficult circumstances to ensure an inclusive session.

In accordance with the adopted procedure (see paragraph 6 of the decision in document [A/CN.9/1038, Annex 1](#)), the rapporteur and I will prepare a summary reflecting the deliberations and any conclusions reached during the session (the "Summary"), which will be circulated to you for comments. The Summary will be in a format similar to that of previous Working Group reports. My hope is that the Working Group will be satisfied with the Summary and will be willing to adopt it as its report to the Commission at its fifty-fifth session in 2022.

Please feel free to convey all your comments on the above to the secretary of the Working Group (Ms. Corinne Montineri, corinne.montineri@un.org) copying myself (Shane.Spelliscy@international.gc.ca) and the rapporteur (Natalie.MORRIS-SHARMA@agc.gov.sg). I count on your constructive feedback despite such a short notice and on your kind cooperation.

Yours sincerely,



Shane Spelliscy
Chair
UNCITRAL Working Group III