



General Assembly

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**United Nations Commission on
International Trade Law
Working Group III (Investor-State Dispute
Settlement Reform)
Forty-fourth session
Vienna, 23–27 January 2023**

Annotated provisional agenda

I. Provisional agenda

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

II. Composition of the Working Group

1. The Working Group is composed of all States members of the Commission, which are the following: Afghanistan (2028), Algeria (2025), Argentina (2028), Armenia (2028), Australia (2028), Austria (2028), Belarus (2028), Belgium (2025), Brazil (2028), Bulgaria (2028), Cameroon (2025), Canada (2025), Chile (2028), China (2025), Colombia (2028), Côte d'Ivoire (2025), Croatia (2025), Czechia (2028), Democratic Republic of the Congo (2028), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Greece (2028), Honduras (2025), Hungary (2025), India (2028), Indonesia (2025), Iran (Islamic Republic of) (2028), Iraq (2028), Israel (2028), Italy (2028), Japan (2025), Kenya (2028), Kuwait (2028), Malawi (2028), Malaysia (2025), Mali (2025), Mauritius (2028), Mexico (2025), Morocco (2028), Nigeria (2028), Panama (2028), Peru (2025), Poland (2028), Republic of Korea (2025), Russian Federation (2025), Saudi Arabia (2028), Singapore (2025), Somalia (2028), South Africa (2025), Spain (2028), Switzerland (2025), Thailand (2028), Türkiye (2028), Turkmenistan (2028), Uganda (2028), Ukraine (2025), United Kingdom of Great Britain and Northern Ireland (2025), United States of America (2028), Venezuela (Bolivarian Republic of) (2028), Viet Nam (2025) and Zimbabwe (2025).

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

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

III. Annotations to agenda items

Item 1. Opening of the session

3. The forty-fourth session of the Working Group will be held in Vienna from 23 to 27 January 2023 at the Vienna International Centre. Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2 to 5 p.m., except on Monday, 23 January 2023, when the session will be opened at 10 a.m. Other arrangements for the session will be announced on the web page of Working Group III in due course.

Item 2. Election of officers

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

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

5. At its fiftieth session in 2017, the Commission entrusted Working Group III with a broad mandate to work on the possible reform of investor-State dispute settlement (ISDS). It also agreed that in line with the UNCITRAL process, the Working Group would, in discharging that mandate, ensure that the deliberations, while benefiting from the widest possible breadth of available expertise from all stakeholders, would be Government-led with high-level input from all Governments, consensus-based and be fully transparent. The Working Group would proceed to: first, identify and consider concerns regarding ISDS; second, consider whether reform was desirable in light of any identified concerns; and third, if the Working Group were to conclude that reform was desirable, develop any relevant solutions to be recommended to the Commission. The Commission agreed that broad discretion should be left to the Working Group in discharging its mandate, and that any solutions devised would be designed taking into account the ongoing work of relevant international organizations and with a view to allowing each State the choice of whether and to what extent it wishes to adopt the relevant solution(s).¹

6. On 24 December 2021, the General Assembly decided to allocate one additional one-week session per year to the Working Group and the necessary human resources as recommended by the Commission for a single period of four years, from 2022 to 2025.² The additional week in 2022 was utilized for holding parts of the forty-third session and will be used in 2023 for holding the forty-fourth session, both in Vienna.

7. At its fifty-fifth session in 2022, the Commission expressed its satisfaction with the progress made by the Working Group and the support provided by the Secretariat.³ The Commission also heard an outline of the work to be conducted by the Working Group during the four weeks of session scheduled till the fifty-sixth session of the Commission in 2023. The Working Group was encouraged to submit to the Commission for its consideration a code of conduct with commentary and texts on alternative dispute resolution mechanisms.⁴

8. From its thirty-fourth to thirty-seventh session, the Working Group identified and discussed concerns regarding ISDS and considered that reform was desirable in

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

² General Assembly resolution 76/229, para. 15. See also *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17 (A/76/17)*, para. 263.

³ *Ibid.*, *Seventy-seventh session, Supplement No. 17 (A/77/17)*, para. 186.

⁴ *Ibid.*, para. 194(c).

light of the identified concerns.⁵ From its thirty-eighth to forty-third session, the Working Group considered concrete elements for ISDS reform.⁶

9. At its fortieth session in February 2021, the Working Group requested the Secretariat to further develop the provisions on an appellate mechanism (A/CN.9/1050, paras. 112-115). At its forty-third session in September 2022, the Working Group conducted a second reading of articles 1 to 9 of the draft code of conduct for adjudicators based on document A/CN.9/WG.III/WP.216 and requested the Secretariat to prepare, based on its deliberations and decisions, two separate texts, a code of conduct for arbitrators and a code of conduct for judges, to be accompanied by a commentary (A/CN.9/1124, paras. 201-279).

Reform elements and documentation

10. At its forty-fourth session, the Working Group is expected to continue its deliberations on the draft code of conduct and accompanying commentary as well as on an appellate mechanism. The detailed scheduling of the session will be provided in a letter by the Chair in advance of the session taking into account the available conference time and the working method agreed by the Commission at its fifty-fifth session (see para. 14 below).

11. The consideration of the above-mentioned reform elements would be based on the following documents prepared by the Secretariat:

- A/CN.9/WG.III/WP.223 on the draft code of conduct and commentary; and
- A/CN.9/WG.III/WP.224 on the appellate mechanism.

12. Reference should also be made to document A/CN.9/WG.III/WP.216, which contains a prior version of the draft code of conduct and document A/CN.9/WG.III/WP.208, which addresses the means of implementation and enforcement of the code.

13. The UNCITRAL documents are posted on the UNCITRAL website upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group III website.

Item 5. Adoption of the report

14. The Commission, at its fifty-fifth session in 2021, decided that Working Group III could use the last meeting of its sessions for substantive deliberations, rather than for the adoption of the report, and continue the practice of adopting the report by a written procedure. Accordingly, the Chairperson and the Rapporteur will prepare a summary reflecting the deliberations and any conclusions reached during the session, which would be circulated during or after the session for comments by delegations. Based on the comments received, a revised summary would be prepared and circulated for adoption by the Working Group as its report for submission to the fifty-sixth session of the Commission, scheduled to be held in Vienna from 3 to 15 July 2023. In case there are objections, it will be presented as the summary of the Chairperson and the Rapporteur for consideration and action by the Commission as it deems appropriate or may be adopted by the Working Group as its report at the forty-fifth session, scheduled to take place from 27 to 31 March 2023 in New York.⁷

⁵ 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.

⁶ The deliberations and decisions of the Working Group at its thirty-eighth to forty-third 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; and A/CN.9/1124.

⁷ *Official Records of the General Assembly, Seventy-seventh session, Supplement No. 17 (A/77/17)*, para. 236.