



General Assembly

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United Nations Commission on International Trade Law Working Group III (Investor-State Dispute Settlement Reform)

Thirty-ninth session

New York, 30 March – 3 April 2020

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: Algeria (2025), Argentina (2022), Australia (2022), Austria (2022), Belarus (2022), Belgium (2025), Brazil (2022), Burundi (2022), Cameroon (2025), Canada (2025), Chile (2022), China (2025), Colombia (2022), Côte d'Ivoire (2025), Croatia (2025), Czechia (2022), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Honduras (2025), Hungary (2025), India (2022), Indonesia (2025), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2025), Kenya (2022), Lebanon (2022), Lesotho (2022), Libya (2022), Malaysia (2025), Mali (2025), Mauritius (2022), Mexico (2025), Nigeria (2022), Pakistan (2022), Peru (2025), Philippines (2022), Poland (2022), Republic of Korea (2025), Romania (2022), Russian Federation (2025), Singapore (2025), South Africa (2025), Spain (2022), Sri Lanka (2022), Switzerland (2025), Thailand (2022), Turkey (2022), Uganda (2022), Ukraine (2025), United Kingdom of Great Britain and Northern Ireland (2025), United States of America (2022), Venezuela (Bolivarian Republic of) (2022), 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 thirty-ninth session of the Working Group will be held at the United Nations Headquarters in New York from 30 March to 3 April 2020. Meeting hours will be from 10 a.m. to 1 p.m. and from 3 to 6 p.m., except on Monday, 30 March 2020, when the session will be open 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 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. From its thirty-fourth to thirty-seventh session, the Working Group identified and discussed concerns regarding ISDS and considered that reform was desirable in light of the identified concerns.²

7. At its fifty-second session, in 2019, the Commission expressed its satisfaction with the progress made by the Working Group through a constructive, inclusive and transparent process and for the decision of the Working Group to elaborate and develop multiple potential reform solutions simultaneously. The Commission also expressed its appreciation for the support provided by the Secretariat.³

8. The Commission further expressed its appreciation for the contributions to the UNCITRAL trust fund from the European Union, the German Federal Ministry for Economic Cooperation and Development (BMZ), and the Swiss Agency for Development and Cooperation (SDC), aimed at allowing the participation of representatives of developing States in the deliberations of the Working Group as well as participation in regional intersessional meetings, and was informed about ongoing

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

² 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.

³ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 169.

efforts by the Secretariat to secure additional voluntary contributions. States were urged to contribute to, and support, those efforts. 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.⁴

9. At its thirty-eighth session (Vienna, 14-18 October 2019), the Working Group agreed on a project schedule to discuss, elaborate and develop multiple potential reform solutions simultaneously and commenced its consideration of reform options.⁵ It was agreed that the thirty-ninth session would be allocated consider the following reform options: (i) dispute prevention and mitigation as well as other means of alternative dispute resolution; (ii) treaty interpretation by States parties; (iii) security for costs; (iv) means to address frivolous claims; (v) multiple proceedings including counterclaims; and (vi) reflective loss and shareholder claims based on joint work with OECD. In addition, it was agreed that the Working Group would consider how to plan its future work including whether to request additional session time to the Commission depending on the workload.

10. At that session, the Working Group also considered establishment of an advisory centre, a code of conduct and third party.⁶ At the resumed thirty-eighth session (Vienna, 20-24 January 2020), the Working Group considered the appellate and multilateral court mechanisms as well as selection and appointment of ISDS tribunal members.⁷

(b) Documentation

11. At its thirty-ninth session, the Working Group is expected to continue its consideration of ISDS reform based on the following documents:

(a) Documents prepared by the Secretariat:

- A/CN.9/WG.III/WP.190 on dispute prevention, mitigation and mediation
- A/CN.9/WG.III/WP.191 on treaty interpretation by States parties
- A/CN.9/WG.III/WP.192 on security for costs and frivolous claims
- A/CN.9/WG.III/WP.193 on multiple proceedings and counterclaims
- A/CN.9/WG.III/WP.194 on multilateral instrument on ISDS reform

(b) Submissions from Governments: Indonesia ([A/CN.9/WG.III/WP.156](#)); European Union and its member States ([A/CN.9/WG.III/WP.159](#) and [Add.1](#)); Morocco ([A/CN.9/WG.III/WP.161](#)); Thailand ([A/CN.9/WG.III/WP.162](#)); Chile, Israel and Japan ([A/CN.9/WG.III/WP.163](#)); Costa Rica ([A/CN.9/WG.III/WP.164](#) and [A/CN.9/WG.III/WP.178](#)); Brazil ([A/CN.9/WG.III/WP.171](#)); Colombia ([A/CN.9/WG.III/WP.173](#)); Turkey ([A/CN.9/WG.III/WP.174](#)); Ecuador ([A/CN.9/WG.III/WP.175](#)); South Africa ([A/CN.9/WG.III/WP.176](#)); China ([A/CN.9/WG.III/WP.177](#)); the Republic of Korea ([A/CN.9/WG.III/WP.179](#)); Bahrain ([A/CN.9/WG.III/WP.180](#)); Mali ([A/CN.9/WG.III/WP.181](#)); Submission from the Governments of Chile, Israel, Japan, Mexico and Peru ([A/CN.9/WG.III/WP.182](#)); Kuwait ([A/CN.9/WG.III/WP.186](#)); Kazakhstan ([A/CN.9/WG.III/WP.187](#)); and the Russian Federation ([A/CN.9/WG.III/WP.188](#) and [Add.1](#)).

12. Any additional submission received from Governments will be made available on the [Working Group III page](#). The webpage also contains submission and statements

⁴ Ibid., paras. 165 and 166.

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

⁶ Report of the Working Group at its thirty-eighth session ([A/CN.9/1004](#)).

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

by international organizations and selected research material (see [here](#)) as well as a bibliography of recent articles (see [here](#)).

13. The Working Group may also wish to make reference to the following background documents also available on the [UNCITRAL website](#):

- 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)*); fifty-first session (*Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*); and fifty-second session (*Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*);
- Report of the Working Group on the work of its thirty-fourth session ([A/CN.9/930/Rev.1](#) and [A/CN.9/930/Rev.1/Add.1](#)); thirty-fifth session ([A/CN.9/935](#)); thirty-sixth session ([A/CN.9/964](#)); thirty-seventh session ([A/CN.9/970](#)); thirty-eighth session ([A/CN.9/1004](#)); and the resumed thirty-eighth session ([A/CN.9/1004/Add.1](#)).
- Note by the Secretariat on the reform options ([A/CN.9/WG.III/WP.166](#) and its addendum).

14. 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 page](#).

Item 5. Adoption of the report

15. The Working Group may wish to adopt, at the close of its session, a report for submission to the fifty-third session of the Commission, scheduled to be held in New York, from 6 to 17 July 2020.

IV. Scheduling of meetings

16. The thirty-ninth 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,⁸ 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). 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 and subsequently incorporated into the report.

17. The Working Group may wish to note that its fortieth session is scheduled to be held in Vienna, from 5 to 9 October 2020, which is subject to confirmation by the Commission at its fifty-third session.

⁸ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17 and corrigendum (A/56/17 and Corr.3)*, para. 381.