



# General Assembly

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**United Nations Commission on  
International Trade Law  
Working Group III (Investor-State Dispute  
Settlement Reform)  
Thirty-fifth session  
New York, 23–27 April 2018**

## 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-fifth session of the Working Group will be held at the United Nations Headquarters, New York, from 23–27 April 2018. Meeting hours will be from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m., except on Monday, 23 April 2018, 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](#)); on Possible future work in the field of dispute settlement: Ethics in international arbitration ([A/CN.9/916](#)); and on Possible future work in the field of dispute settlement: 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).<sup>1</sup>

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.<sup>2</sup> The Commission may consider whether to mandate a working group to undertake work in either or both of them at a future time.<sup>3</sup>

8. At its thirty-fourth session, the Working Group commenced work on consideration of possible reform of investor-State dispute settlement (ISDS) on the basis of a Note by the Secretariat ([A/CN.9/WG.III/WP.142](#)) and submissions

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

<sup>2</sup> *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 175–186.

<sup>3</sup> *Ibid.*, para. 195.

from International Intergovernmental Organizations ([A/CN.9/WG.III/WP.143](#)). The deliberations and decisions of the Working Group with respect to certain issues under consideration (including procedural aspects of the arbitral process, outcomes, and transparency) are set out in document [A/CN.9/930](#), which contains Part I of its Report on the work of its thirty-fourth session.

9. At its thirty-fifth session, the Working Group is expected to continue its consideration of the issues set out in the documents referred to above, and to adopt Part II of its Report on the work of its thirty-fourth session ([A/CN.9/930/Add.1](#)).

**(b) Documentation**

10. The Working Group will have before it documents [A/CN.9/WG.III/WP.142](#) and [A/CN.9/WG.III/WP.143](#) referred to above, a Note by the Secretariat: Possible reform of investor-State dispute settlement (ISDS) — Information regarding costs and duration of the arbitral process and regarding arbitrators and decision-makers, [A/CN.9/WG.III/WP.145](#), and Possible reform of investor-State dispute settlement (ISDS) — Submissions from Intergovernmental Organizations, [A/CN.9/WG.III/WP.146](#).

11. 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](#))); and fiftieth session (*Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* ([A/72/17](#)));
- Note by the Secretariat: Settlement of commercial disputes: presentation of a research paper on the Mauritius Convention on Transparency in Treaty-based Investor-State Arbitration as a possible model for further reforms of investor-State dispute settlement, [A/CN.9/890](#);
- Note by the Secretariat: Possible future work in the field of dispute settlement: Concurrent proceedings in international arbitration, [A/CN.9/915](#);
- Note by the Secretariat: Possible future work in the field of dispute settlement: Ethics in international arbitration, [A/CN.9/916](#);
- Note by the Secretariat: Possible future work in the field of dispute settlement: Reforms of investor-State dispute settlement (ISDS), [A/CN.9/917](#); and
- Compilation of comments by States and international organizations, Investor-State Dispute Settlement Framework, [A/CN.9/918](#) and addenda.

12. UNCITRAL documents are posted on the UNCITRAL website ([www.uncitral.org](http://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**

13. The Working Group may wish to adopt, at the close of its session, a report for submission to the fifty-first session of the Commission, scheduled to be held in New York, from 25 June to 13 July 2018. 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

14. The thirty-fifth 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,<sup>4</sup> 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).

15. The Working Group may wish to note that its thirty-sixth session is scheduled to be held in Vienna, from 29 October–2 November 2018, subject to confirmation by the Commission at its fifty-first session.

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<sup>4</sup> Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum ([A/56/17](#) and Corr.3), para. 381.