

Preparatory Session for UNCITRAL Working Group III

October 12-13, 2019

Hotel NH Danube City
Wagramer Str. 21, 1220 Wien

At its 50th Session in July 2017, the United Nations Commission on International Trade Law (UNCITRAL) mandated its Working Group III (WGIII) to explore reform of investor-state dispute settlement (ISDS).¹ Since that Commission meeting, there have been four formal week-long meetings of WGIII and additional “intersessional” meetings on this topic. From October 14-18, 2019, WGIII will convene for its fifth round of discussions on ISDS reform.²

In advance of that round, on Saturday and Sunday, October 12-13, 2019, this workshop will provide sessions and facilitate discussions focused on the upcoming negotiating round. It will also contain a session dedicated to new attendees, enabling them to get up to speed on UNCITRAL, its method of work, WGIII, and decisions and outputs from the UNCITRAL ISDS reform process to date.

When issuing its mandate, the Commission emphasized that the work of WGIII is to be “Government-led, involving high-level input from all Governments.”³ Because the issue of ISDS reform covers a wide range of complex topics and issues, it is crucial to ensure that there is adequate time and space to consider and discuss, in an informal setting, the relevant concerns and potential ways forward.

The training will involve an introduction from the UNCITRAL Secretariat, and input from external speakers, including academics working on these issues. All input from participants will be under the Chatham House Rule, meaning that the identity and governmental affiliation of all speakers must be kept confidential (although non-attributed statements may be used elsewhere). All statements shall be deemed to be in each participant’s personal capacity; no statement made will be attributed to any Government.

The outline of the agenda is as follows:

¹ [Report of the United Nations Commission on International Trade Law](#), 50th session, July 3-21, 2017, A/72/17, para. 264.

² Documents produced by the UNCITRAL Secretariat in preparation for the 38th Session, as well as government submissions on reform solutions, are available here: https://uncitral.un.org/en/working_groups/3/investor-state. Submissions made by UNCITRAL Observer organizations relevant to the 38th Session are available here: https://uncitral.un.org/en/library/online_resources/investor-state_dispute.

³ Ibid n.1.

DAY 1⁴

Part I: Overview of Developments to Date

9:00 am – 9:20 am: Welcome remarks and introduction*, with Christian Pitschas (GIZ) and Lise Johnson and Brooke Guven (CCSI)

9:20 am – 9:50 am: UNCITRAL and its method of working*, with Judith Knieper (UNCITRAL)

This session will focus on UNCITRAL, looking at such important topics as:

- UNCITRAL’s mandate, broad/general work to date
- UNCITRAL’s relevant past work in this area – an overview
- UNCITRAL’s method of work
 - Decisions by consensus – what does that mean?
 - The process – discussions, agreeing on the report, etc.
 - Member States, Observer States, and other Observers
 - Relationship between Working Group and Commission, and role of other groups (e.g., colloquia)
 - Methods of engagement with other actors/stakeholders inside and outside the UN system

9:50 am – 10:20 am: An overview of Working Group III’s process to date and insights from the Commission sessions and intersessionals*, with Lise Johnson and Brooke Guven (CCSI)

This session will provide a brief overview of the progress of WGIII to date, focusing on (1) concerns identified, (2) potential solutions identified, and (3) discussion of a workplan that will guide WGIII’s future work. Participants who have participated in previous WGIII sessions may be called upon to help guide this discussion.

Part II: Concerns and Potential Reforms: Focus on Issues Identified for Inter-sessional Work

10:30 am – 11:00 am: Potential reform solutions: an overview, with Corinne Montineri

With this session, we will provide an overview of potential reform solutions identified to date, and the Secretariat’s documentation of those solutions in Working Paper 166 (WP166) and the annex thereto.

11:00 am – 12:00 pm: Investment law advisory center or other assistance mechanisms

- Secretariat paper⁵ (presenter: Judith Knieper)
- CCSI Advisory Center Scoping Study (presenter: Lise Johnson)

12:00 pm – 12:45 pm: Lunch

12:45 pm – 1:45 pm: Third-party funding

⁴ A * next to a session title indicates that such session is mandatory for delegates participating in their first UNCITRAL WGIII session - all other workshop participants are invited to attend these sessions.

⁵ Available at: <https://undocs.org/en/A/CN.9/WG.III/WP.168>

- Secretariat paper⁶ (presenter: Corinne Montineri)
- CCSI/IIED/IISD Observer Organization submission (presenter: Brooke Guven)⁷

1:45 pm – 3:15 pm: Selection and appointment of adjudicators

- Secretariat paper⁸ (presenter: Corinne Montineri)
- Academic forum paper⁹ (presenter: [Taylor St. John](#))
- Other academic input (presenter: [Marc Bungenberg](#))

3:30 pm – 4:20 pm: Parallel claims and reflective loss

- Secretariat paper¹⁰ (presenter: Jae Sung Lee)

4:30 pm – 5:30 pm: Codes of conduct for adjudicators and counsel – standards, rules, and enforcement thereof

- Secretariat paper¹¹ (presenter: Jae Sung Lee)
- Other academic input (presenter: [Catherine A. Rogers](#) (tbd))

DAY 2

Part III: Possible Reforms and Practical Considerations

8:30 am – 9:00 am: Recap

Day 2 will kick off with an informal discussion, led by CCSI, of issues raised on Day 1.

9:00 am – 10:45 am: Reform options and their contributions to identified concerns and cross-cutting issues¹² (facilitated by CCSI)

In this session we will catalogue and discuss reform options identified by states and observer organizations in written and oral submissions in the Working Group to date, as well relevant inputs by intergovernmental organizations such as UNCTAD and the OECD, and will provide participants an opportunity to discuss in more detail the contents of the different potential reform options, and their contributions to particular reform solutions. We will build on and go beyond reform options discussed on Day 1.

⁶ Available at: <https://undocs.org/en/A/CN.9/WG.III/WP.172>

⁷ Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/wgiii_transparency_0.pdf

⁸ Available at: <https://uncitral.un.org/sites/uncitral.un.org/files/wp169.pdf>

⁹ Available at: <https://uncitral.un.org/sites/uncitral.un.org/files/wp169.pdf>

¹⁰ Available at: <https://undocs.org/en/A/CN.9/WG.III/WP.170>

¹¹ Available at: <https://undocs.org/en/A/CN.9/WG.III/WP.167>

¹² Government submissions made in advance of the 38th Session can be found here: https://uncitral.un.org/en/working_groups/3/investor-state. UNCITRAL WGIII Observer submissions can be found here: https://uncitral.un.org/en/library/online_resources/investor-state_dispute.

11:00 am – 11:40 am: Options and practical relating to methods of work: whether/how to prioritize, sequence, delegate, etc. (facilitated by CCSI)

This session will focus on the various options for advancing the substantive aims of the Working Group, and the implications of those options for such issues as: voice and workloads of country delegations, timing of progress and “harvests,” and number, order, and breadth of reform options pursued.

11:40 am – 12:15 pm: A model for reforming IIAs? The example of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

One approach state and observer delegates have identified as being a potential way forward for adopting and implementing reforms of existing treaties is to pursue an approach modelled on the Multilateral Convention to Implement Tax-Treaty Related Measures. This session aims to provide delegates more information on that treaty so as to enable further reflection and dialogue on whether and how that model (or aspects thereof) could potentially be used in the context of ISDS reform.

- Overview of the Multilateral Treaty (presenter: [Irma Mosquera Valderrama](#))¹³

12:15 pm – 12:30 pm: Closing discussion - The week and months ahead

¹³ More information on the BEPS Multilateral Treaty is available at: <https://www.oecd.org/tax/beps/beps-actions/action15/>. More general information on the OECD/G20 BEPS Inclusive Framework is available at: <https://www.oecd.org/tax/beps/>.