Online Preparatory Sessions for UNCITRAL Working Group III, 39th Session
September 29, 2020 Session
Damages in ISDS
Background Materials

This document provides Preparatory Session participants with the resources relevant to Damages in ISDS. While all resources will be relevant for consideration of the issues raised, for purposes of the September 29th Preparatory Session we have selected several that are highly recommended to review in advance.

Required Background Videos for September 29th Preparatory Session:

*Please remember that participants may watch the videos at 1.5x or 2x speed

- **Jonathan Bonnitcha, Damages in International Investment Law** (IISD) (duration 1:02:43; July 2019) available at: https://www.iisd.org/events/webinar-damages-international-investment-law

- **Martins Paparinskis, A Case Against Crippling Compensation in International Law of State Responsibilities**: https://ucl.zoom.us/rec/play/YYV-ESXbp-kmHKCufZkuQUifr7bfXMcfuSXvLnpmDxnaFTY3tGsnafIrx8rU1qmZQ9WFtexUtQRLYAVd.ZN340wQf1RWmiMG0, (password: z.dQD&8@)

- **Dinah Shelton, Remedies Available in International Human Rights Law** (duration 27 min)  
  https://columbiauniversity.zoom.us/rec/share/Zdh25QhUpwOz9QK9XY8yr29soO01faa2A919Xe3pTxFYr2JBDDJIVh6eSlqPGSzk.qzdQFXxcQIV2yeA7/startTime=1600454293000

Other Relevant Materials:

Publications:

- **Jonathan Bonnitcha & Sarah Brewin, Compensation Under Investment Treaties** (Advance Copy), IISD Best Practices Series (October 2019),  

- **World Bank, Legal Framework for the Treatment of Foreign Investment**,  
p. 41-44 (setting forth World Bank guidance on valuation of an asset in cases of expropriation)


- **Christina Baharry** (ed.), *Contemporary and Emerging Issues on the Law of Damages and Valuation in International Investment Arbitration* (2018) available in dropbox


- **Toni Marzal**, *We Need to Talk About Valuation in ISDS*, (March 2020) https://verfassungsblog.de/we-need-to-talk-about-valuation-in-isds/


**State Submissions** (that include recommendations on Damages):

- **Indonesia** (WP 156) https://undocs.org/en/A/CN.9/WG.III/WP.156 (para 8-9: calling for valuation guideline to be established, containing a check-and-balances mechanism for claims, an established method for valuation of businesses in accordance with internationally recognized standards in financial reporting, a code of conduct for
arbitrators in appraising such valuation, and a mechanism to dismiss frivolous claims at an early stage.)

- **Morocco** (WP 161) [https://undocs.org/en/A/CN.9/WG.III/WP.161](https://undocs.org/en/A/CN.9/WG.III/WP.161) (para 14: calling for the adoption of objective and transparent criteria for determining the compensation payable to investors that have suffered damage. In that regard, it is important that the amount of compensation is commensurate with the actual damage suffered.


- **South Africa** (WP 176) [https://undocs.org/en/A/CN.9/WG.III/WP.176](https://undocs.org/en/A/CN.9/WG.III/WP.176) (para 73, calling for a guidance instrument on damages awards)