

## **Online Preparatory Sessions for UNCITRAL Working Group III, 39<sup>th</sup> Session**

September 29, 2020 Session

Damages in ISDS

At its 50<sup>th</sup> 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).<sup>1</sup> Since that Commission meeting, there have been five formal week-long meetings of WGIII and additional “intersessional” meetings on this topic. From March 30-April 4, 2020, WGIII was scheduled to convene for its seventh round of discussions (the 39<sup>th</sup> session) on ISDS reform.<sup>2</sup> In light of COVID-19, however, that session was postponed and will take place from October 4-9, 2020 in a hybrid format (in Vienna and virtually).

During this time, work has been ongoing. The Secretariat is progressing on tasks that have been assigned to it, and countries are continuing to shape their visions for reform and strategies for implementing them through the UNCITRAL process. Dialogue on issues and potential solutions is continuing among delegations and within countries.

In this context, the Columbia Center on Sustainable Investment, with support from the German Cooperation, is organizing a series of online sessions designed to provide a forum for governments to make optimal use of this additional time to prepare for future meetings and intersessional engagements (whether formal or informal, internal or external). The online content will focus on the specific topics that will be covered in the 39<sup>th</sup> session: (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; (vi) reflective loss and shareholder claims based on joint work with OECD; (vi) planning of further work.

When issuing its mandate, the Commission emphasized that the work of WGIII is to be “Government-led, involving high-level input from all Governments.”<sup>3</sup> 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. One advantage of the online platform is that it offers an opportunity for governments to involve more representatives from capital in the preparatory discussions, an

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

<sup>2</sup> Documents produced by the UNCITRAL Secretariat in preparation for the 39<sup>th</sup> Session, as well as government submissions on reform solutions, are available here: [https://uncitral.un.org/en/working\\_groups/3/investor-state](https://uncitral.un.org/en/working_groups/3/investor-state). Submissions made by UNCITRAL Observer organizations relevant to the 39<sup>th</sup> Session are available here: [https://uncitral.un.org/en/library/online\\_resources/investor-state\\_dispute](https://uncitral.un.org/en/library/online_resources/investor-state_dispute).

<sup>3</sup> Ibid n.1.

important benefit given the range of issues and areas of expertise that ISDS and ISDS reform touch upon.

The training will involve input from the UNCITRAL Secretariat as well as from external speakers, including academics working on these issues.

All input from participants will be under the Chatham House Rule, meaning that participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed. All statements shall be deemed to be in each participant's personal capacity; no statement made will be attributed to any individual or Government.

The session will take place on **Tuesday, September 29, 2020 from 9:00 – 10:30 am EDT**. There will be simultaneous interpretation into Spanish and French.

#### **AGENDA: Damages (all times in EDT)**

- 9:00 - 9:10: Welcome
- 9:10 - 9:30: Opening remarks from:
  - **Omotese Eva**, Government of Nigeria
  - **Muhammad Usman Piracha**, Government of Pakistan
- 9:30 - 9:55: Reflections / additional remarks from:
  - **Nathalie Bernasconi-Osterwalder/Sarah Brewin**, International Institute for Sustainable Development
  - **Martins Paporinskis**, University College London
  - **Dinah Shelton**, The George Washington University
- 9:55 - 10:10: Q & A
- 10:10 - 10:25: Breakout groups
- 10:25 - 10:30: Regroup for plenary wrap-up