

Online Preparatory Sessions for UNCITRAL Working Group III, 39th Session

July 23, 2020 Session

Shareholder Claims and Reflective Loss

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 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 39th session) on ISDS reform.² In light of COVID-19, however, that session was cancelled; the next meeting is tentatively scheduled for October 2020, but whether that proceeds as planned is as yet uncertain.

Nevertheless, work is 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 were to be covered in the 39th session, and that will likely be on the agenda when the negotiations resume: (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. We will also devote time to discussing the issue of how reforms will be implemented.

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. 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 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.

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 39th 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 39th Session are available here: https://uncitral.un.org/en/library/online_resources/investor-state_dispute.

³ Ibid n.1.



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 at **9 am ET**. There will be simultaneous translation into Spanish and French.

This session aims to build on and further explore issues and options

- discussed in the UNCITRAL webinar,
- covered in the background papers produced by the Secretariat,⁴
- referred to in the additional materials in the dropbox, and
- identified or encountered by you in your work.

Shareholder Claims and Reflective Loss (July 23) (all times in ET)

- 8:45 am: Virtual room opens
- 9:00 am – 9:05 am: Welcome
- 9:05 am – 9:35 am: Opening remarks:
 - Jae Sung Lee, UNCITRAL Secretariat
 - Antonella Márquez, Government of Argentina
 - Karin Kizer, Government of the United States
 - Jose Gómara, Government of Spain
- 9:35 am – 9:45 am: Q&A
- 9:45 am – 10:10 am: Breakout groups
- 10:10 am – 10:30 am: Plenary discussion

⁴ See the Secretariat Notes: Shareholder Claims and Reflective Loss ([A/CN.9/WG.III/WP.170](#)); and Multiple Proceedings and Counterclaims ([A/CN.9/WG.III/WP.193](#)).