

Kluwer Arbitration Blog

2024 in Review: ISDS Reforms – Busy Business and Progress

Ajoo Kim (Assistant Editor for Investment Arbitration) · Tuesday, January 21st, 2025

2024 appeared to be one of the busiest years for investor-State dispute settlement (“ISDS”) reform, with significant advances in the United Nations Commission on Trade Law (“UNCITRAL”) Working Group III discussions and the adoption of the modernized Energy Charter Treaty (“ECT”). This post exclusively focuses on Working Group III’s key milestones in 2024 and relevant contributions to the Kluwer Arbitration Blog (“KAB”), while the ECT modernization will be discussed separately [here](#).

UNCITRAL Sessions in 2024

During the year, three formal sessions, two inter-sessional meetings, the first Advisory Centre on International Investment Dispute Resolution (“Advisory Centre”) operationalization meeting, and several informal meetings and [roundtable](#) took place.

The [47th session](#) in January reviewed the draft provisions on procedural and cross-cutting issues ([A/CN.9/WG.III/WP.231](#) and [A/CN.9/WG.III/WP.232](#)), draft guidelines on prevention and mitigation of international investment disputes (“prevention and mitigation”) ([A/CN.9/WG.III/WP.235](#)), and the draft statute of an Advisory Centre ([A/CN.9/WG.III/WP.236](#)), along with its [budget and financing](#) considerations. The [48th session](#) in April advanced discussions of the draft statute of an Advisory Centre ([A/CN.9/WG.III/WP.238](#)) and the draft guidelines on prevention and mitigation ([A/CN.9/WG.III/WP.235](#)), and deliberated on the draft statute of a standing mechanism for the resolution of international investment disputes (“standing mechanism”) ([A/CN.9/WG.III/WP.239](#) and [A/CN.9/WG.III/WP.240](#)). Similar to previous years, Working Group III’s work was presented to and finalized at the UNCITRAL Commission’s [57th session](#), some of the outcome of which are presented below. The [49th session](#) in September further deliberated the draft statute of a standing mechanism, draft provisions on procedural and cross-cutting issues ([A/CN.9/WG.III/WP.244](#) and [A/CN.9/WG.III/WP.245](#)), and draft multilateral instrument on ISDS reform ([A/CN.9/WG.III/WP.246](#)).

Two inter-sessional meetings—the seventh in [Brussels](#) (Belgium) and eighth in [Chengdu](#) (China)—served as vital forums. The seventh meeting focused on the standing mechanism, the Advisory Centre, procedural rules and cross-cutting issues, and ways to improve access to justice. Meanwhile, the eighth meeting concentrated on an appellate mechanism and a multilateral instrument on ISDS reform. Such meetings facilitated advancing discussions within the Working Group, contributing to the revised guidelines on prevention and mitigation, as introduced below.

Advisory Centre

A major achievement was the finalization and adoption in principle of the Statute of the Advisory Centre ([A/79/17](#), paras. 98-167). The Working Group III, during its 47th and 48th sessions (succeeding the 43rd and 46th discussions), discussed the draft statute of the Advisory Centre, which, per articles 6 and 7 of the draft statute, has the mandate of “capacity building” and provision of “legal support and advice with regard to an international investment dispute proceeding.” The text of this draft statute was approved at the Working Group III’s 48th session in April 2024, and subsequently presented to the Commission at its 57th session for finalization and adoption in principle.

Güné Ünüvar’s post, “[Meaningful Consensus or Delaying Disagreements? UNCITRAL Working Group III and the Advisory Centre on International Investment Dispute Resolution](#),” analyzed key outstanding elements of the draft statute, including the Advisory Centre’s objective and scope of activities, governance structure, financing mechanisms, and legal status. It laid out the history of some of the key discussions and highlighted the challenges in reaching consensus. For example, Ünüvar observed that while State-to-State dispute settlement (“SSDS”) is not necessarily beyond the scope of Working Group III’s mandate, the draft statute explicitly excludes reference to SSDS, delegating the decision to the Governing Committee. Ünüvar further shared insights into establishing the Advisory Centre as part of the United Nations system. Despite ongoing disagreements, Ünüvar noted that tangible progress has been made, with the draft statute reflecting broad consensus. He acknowledged that delegating key decisions to the Advisory Centre postpones certain disagreements but offers flexibility to address them later under its operational rules when they become pertinent.

Lorenzo Cotula’s “[Treating Symptoms or Root Causes? The Draft Statute of an Advisory Centre on International Investment Dispute Resolution](#)” assessed the draft statute in a similar context. It particularly examined whether an Advisory Centre could meet the high expectations of resource-constrained developing countries and capital-exporting economies, depending on its mandate, resources, and role in ISDS reform. Cotula questioned whether the Advisory Centre’s design addresses systemic issues in ISDS or merely mitigates symptoms without tackling structural issues. For future reform efforts, Cotula emphasized the importance of prioritizing the most consequential issues and dedicating sufficient time to finding effective solutions. Both posts highlighted the need for a clear Advisory Centre mandate to prevent redundancy and inefficiency.

Anna Chiara Amato’s post, “[The Advisory Centre on International Investment Dispute Resolution, ICSID and PCA: Advisable Co-Existence or Risky Fragmentation?](#)”, also examined the draft statute, but with a focus on the relationship between the Advisory Centre and other existing institutions, namely the International Centre for the Settlement of Investment Disputes and the Permanent Court of Arbitration. Amato expressed concerns about potential institutional fragmentation, questioning whether overlapping mandates could undermine the coherence of ISDS mechanisms.

Advisory Centre Operationalization Meeting

Another notable development was the launch of an Advisory Centre operationalization meeting.

During its 57th session, the Commission recommended that all States and regional economic integration organizations participate in preparatory work using informal means. This work, based on the draft statute adopted in principle, would address the following:

(a) ways to establish the Advisory Centre within the United Nations system based entirely on extrabudgetary resources; (b) criteria for determining the location of the headquarters and regional offices; (c) the anticipated budget based on potential membership and workload, and the need to ensure sustainable operations; (d) the amount of contributions by Members and methods of payment; (e) objective criteria for classifying States in the annexes; (f) thresholds of membership and contributions for the entry into force of the statute; and (g) decisions, rules and regulations to be adopted by the Governing Committee, including staff and financial regulations. As an indicative list of issues to be tackled, it was agreed that priority might be given to certain issues as progress was made in the preparatory work (A/79/17, para. 158).

The first Advisory Centre operationalization meeting held in Bangkok, Thailand in December 2024, marked the start of such informal forum. The second meeting is scheduled to take place in Yerevan, Armenia in 2025.

Multilateral Instrument on ISDS Reform

2024 also marked the drafting of a multilateral instrument on ISDS reform. Mariam Gotsiridze's post, "[Is the Time Right for a Multilateral Investment Treaty?](#)," the first KAB post on ISDS reform in the year, explored the feasibility of negotiating a multilateral investment treaty in today's global landscape, exploring both the opportunities and challenges involved.

With the release of the [draft multilateral instrument](#) on ISDS reform ("multilateral instrument") (A/CN.9/WG.III/WP.246), Caroline Kittelmann and Sarah Lemoine, in "[An Overview of the First Draft of the Multilateral Instrument on ISDS Reform](#)," offered a comprehensive review of its key provisions. Analyzing the draft's structure and its mechanism for applying various reform options, the authors underscored its potential to standardize procedural rules while noting unresolved issues about substantive coherence. Though [a challenging project](#), the draft multilateral instrument was recognized as [the first concrete step toward implementing the broader and more substantive reforms](#) of Working Group III.

Dispute Prevention and Mitigation

This topic, preliminarily considered in 2020, progressed significantly in 2024. In 2024, Working Group III considered the [draft guidelines on prevention and mitigation](#) at its 47th session. The [revised guidelines](#), incorporating written comments and feedback from the seventh intersessional meeting, were subsequently prepared and considered at the 48th session in April 2024. Subsequently, [a toolkit](#) compiling different States' practices and reflecting the deliberations of Working Group III ("draft toolkit") was prepared for consideration. The Commission took note of the progress made and the status of work on the draft toolkit (A/79/17, paras. 168-69). The

Commission supported developing the draft toolkit as a descriptive, evolving document illustrating States' practices.

Conclusion

Like 2023, 2024 can be summarized as a year of “milestone achieved, uncertainties persist,” albeit with more notable advances. 2024 highlighted the complexities of ISDS reform, revealing both considerable strides and ongoing challenges. Concerns surrounding ISDS continued to resonate, particularly in the Asia-Pacific region. Luke Nottage’s “[Aggravating Australia’s Arbitration Ambivalence: Zeph’s ISDS Claims](#)” explored how individual cases, like Zeph’s claims against Australia, reflect broader regional attitudes toward arbitration, underscoring the need to address both investor concerns and State sovereignty to foster balanced ISDS mechanisms. Angela Ray T. Abala, in “[Navigating Investor-State Dispute Settlement: Concerns from the Asia-Pacific Region](#),” reported on the Regional Arbitral Institutes Forum, highlighting key challenges like disparities in States’ capacity to handle ISDS claims and concerns about procedural fairness. Moreover, despite the draft statute of the Advisory Centre being adopted in principle, as [Ünüvar](#) noted, it remains uncertain whether the Advisory Centre will meet expectations. Nonetheless, the completion of work on the Advisory Centre and the initiation of operationalization meetings, even informally, signal real, and continued, progress following the [completion of the Code of Conduct](#) in 2023.

At its [50th Session](#) in January 2025, Working Group III will continue reviewing the standing mechanism, procedural and cross-cutting issues, and the multilateral instrument. The outcomes of 2024’s deliberations are poised to influence ISDS reform efforts in 2025 and beyond. As ISDS reform continues in 2025 (*see also* [A/CN.9/1194](#), paras. 126-27), it will be crucial for stakeholders to maintain inclusive and transparent dialogue to build a more balanced and effective ISDS system. Meanwhile, the additional resources allocated to Working Group III are set to expire at the end of 2025 ([A/CN.9/1194](#), para. 123). It remains to be seen how the work will continue within the constraints of existing resources.

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