



The Multilateral Investment Court Initiative

[Redacted]
[Redacted] Dispute Settlement and Legal Aspects of Trade Policy
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Outline

- ISDS concerns
- Main features of the Multilateral Investment Court
- Responds to ISDS concerns
- UNCITRAL process



ISDS concerns

ISDS concerns

Consistency and correctness

- Lack of predictability caused by inconsistency
- Incorrect decisions – errors of law or fact cannot be corrected

Decision-makers/arbitrators

- Impartiality and independence brought into doubt
- Lack of expertise in public international law and public law
- Lack of diversity – geographic and gender

Costs and duration

- Expensive proceedings (significant %age of legal fees on choice of arbitrators)
- Long duration (around 6-8 months on appointment of arbitrators)
- Lack of predictability leads to relitigation and has an impact on duration
- Impact on ability for developing countries to use/ SMEs to access the system

CONCERNS ARE RELATED AND SYSTEMIC



Main features of the Multilateral Investment Court

Main features

**First instance and
appeal mechanism**

**Full-time salaried
adjudicators
appointed by the
treaty parties for
fixed non-renewable
terms**

**High qualifications
and ethical
requirements,
geographical and
gender diversity**

**Robust appointment
procedures based on
best international
practices**

**Effective
enforcement
procedures**

**Open to all
interested countries**

**Applicable to
existing and future
international
treaties ("opt-in"
mechanism)**

**Allocation of costs
among treaty
parties based on
level of development**

**Advisory Centre for
investment law to
assist developing
countries**

**Transparency and
third party access**

**Improved access for
SMEs**

**Structured dialogue
between court and
treaty parties**



Responds to ISDS concerns

Responds to ISDS concerns

Permanency



creates
consistency
and
predictability

Appeal



ensures
consistency and
correctness

Full time
adjudicators



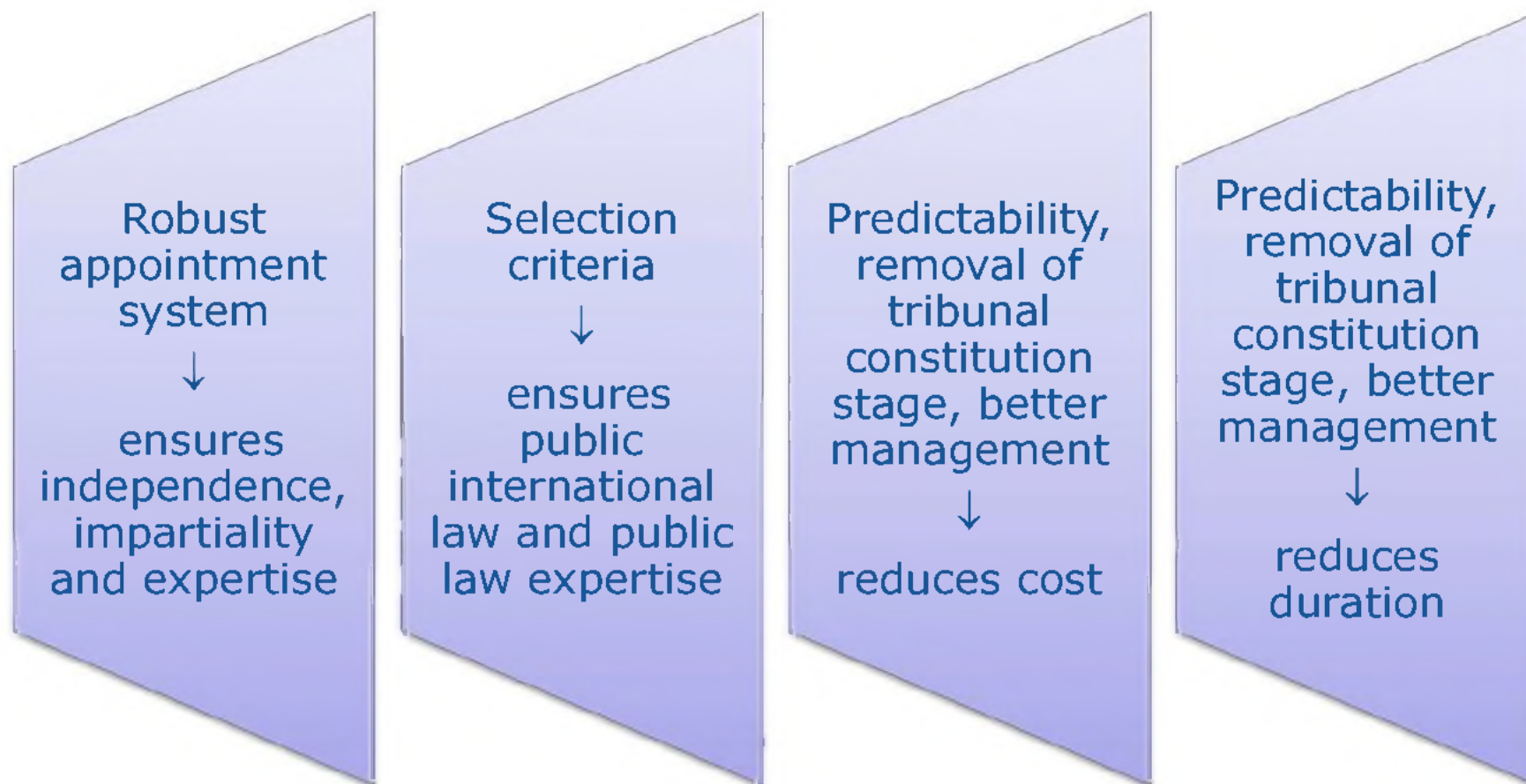
removes
concerns re
independence
and impartiality
of arbitrators

Selection
criteria



ensures
geographical
and gender
representation

Responds to ISDS concerns

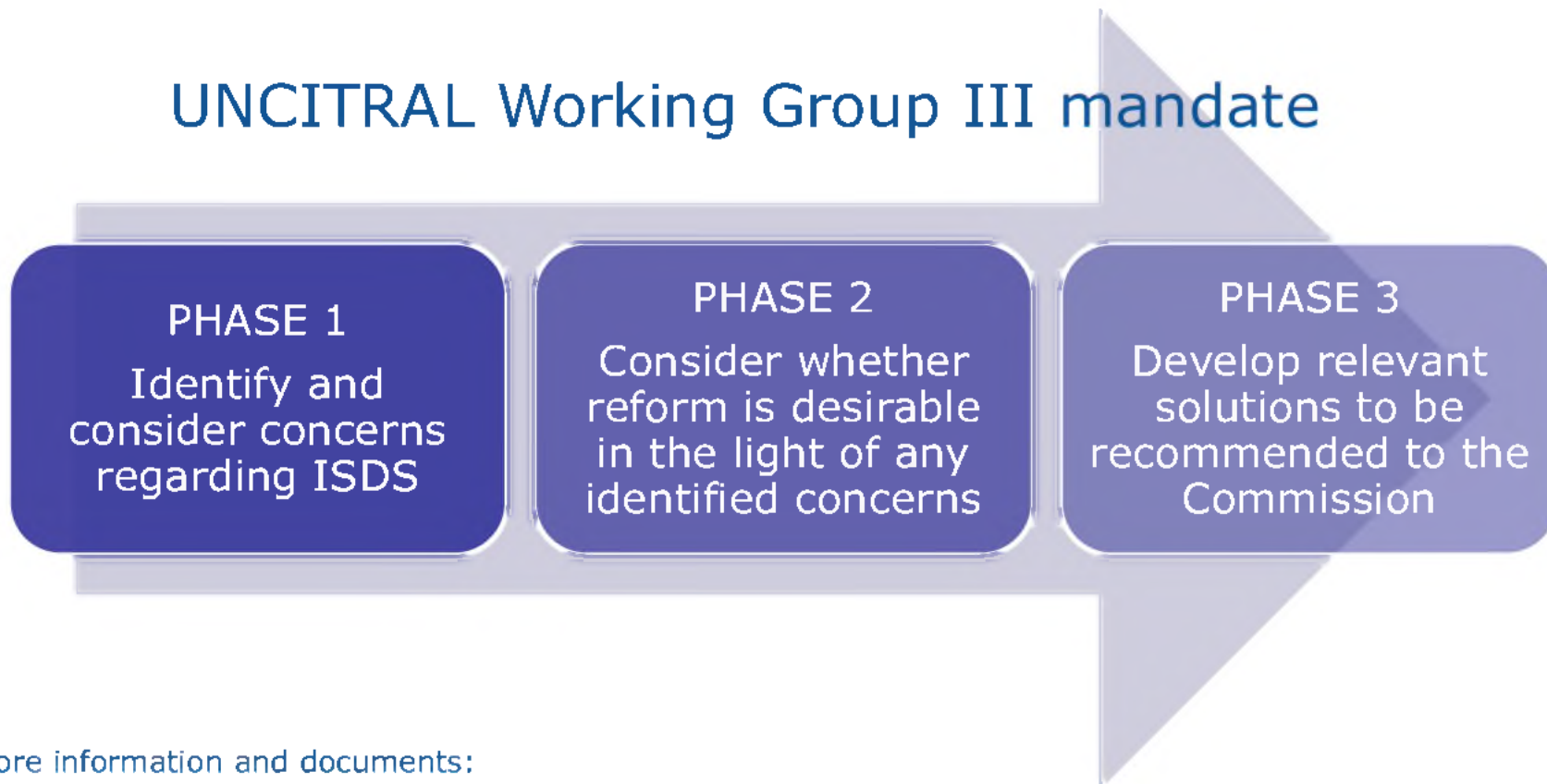




UNCITRAL process

UNCITRAL process

UNCITRAL Working Group III mandate



More information and documents:

http://www.uncitral.org/uncitral/en/commission/working_groups/3Investor_State.html



UNCITRAL process

First 2 rounds of discussions on concerns of ISDS
(Phase 1):

- 27 November–1 December 2017, Vienna
- 23–27 April 2018, New York

3rd round of discussions on desirability of reform
(Phase 2):

- 29 October – 2 November 2018, Vienna

Next discussions on reform options (Phase 3):

- April 2019, New York





UNCITRAL process

UNCITRAL commitment to transparency and openness:

- Participation open to all UN members and any interested party (international/regional organisations, civil society)
- Publication of meeting reports and audio recordings

More information and documents:

<http://www.uncitral.org/uncitral/audio/meetings.jsp>





UNCITRAL process

Working document from the European Union on possible reform of ISDS available in all UN languages (Arabic, Chinese, English, French, Russian and Spanish) ➤ [UNCITRAL and EU Multilateral Investment Court webpage](#)

Travel fund maintained by UNCITRAL and funded by the EU and other donors for granting travel assistance to developing countries to Working Group III sessions ➤ [contact UNCITRAL Secretariat](#)





For further information:

Websites:

UNCITRAL Working Group III (Investor-State Dispute Settlement Reform):

http://www.uncitral.org/uncitral/en/commission/working_groups/3Investor_State.html

European Commission, DG TRADE, Multilateral Investment Court project:

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1608>

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