

44th session of the UNCITRAL Working Group III: Code of Conduct for Arbitrators, its Enforcement, Corruption Allegations in ISDS

Professor Yarik Kryvoi

The UNCITRAL Group III on investor-state dispute settlement reform met on 23-27 January 2023 in Vienna and focused on the commentary on the draft code of conduct for adjudicators in ISDS and the appellate mechanism. On 24 January Vladimir Kozin and I presented key findings of the UNODC ongoing study on corruption allegations in ISDS.

Discussions of the Working Group III members related to the code of conduct revolved around the **duties to disclose**, avoiding conflicts of interest and the binding nature of the code. The Working Group III, members skilfully chaired by Shane Spelliscy, aimed at balancing the need to prevent conflict of interest and not making disclosure and other relevant requirements not too onerous and impractical for the parties. For example, state representatives spent time discussing whether it was important to ask arbitrator candidates to disclose all their publications and talks.

A more fundamental question related to the **consequences of non-compliance with provisions of the code**. The idea is to make the code binding. However, it still remains unclear who is going to enforce the code and resolve possible disputes related to its implementation meeting due process standards. Arbitrators deciding the same case may have a conflict of interest to resolve such issues. Arbitral institutions may not welcome the task of resolving possible disputes either because they do not have the right procedural mechanisms.

I proposed to examine the possibility of using **international administrative tribunals**, created to resolve disputes between officials of intergovernmental organisations and their employers. Many of such tribunals include reputable arbitrators who typically apply international law to resolve such disputes. On the other hand, the statutes of such tribunals are not designed to resolve such issues. Moreover, it usually takes months to resolve international administrative disputes while investor-state tribunals may need to resolve possible disputes quicker.

Following our presentation on 24 January on **corruption and investor-state arbitration**, the Working Group III members asked questions related to the practicality of referring corruption allegations to domestic authorities, the standard of proof, the actual number of cases in which tribunals found corruption and the consequences of fining corruption. An important question concerned the responsibility of states for actions of corrupt officials under public international law and the idea of corruption due diligence.

State representatives and observers commented on the practical importance of doing more work on understanding how to deal with corruption allegations in ISDS so that neither states nor investors have incentives to engage in corrupt conduct.

It was good to reconnect with representatives of states, NGOs and other organisations engaged in the process of reforming the system of investor-state dispute settlement. To read more about other issues discussed at the UNCITRAL Group III in the past, you may wish to enrol in the [Annual ISDS Update](#).

The next session of the UNCITRAL Working Group III will take place on 27-31 March 2023 in New York.

Author:

[Professor Yarik Kryvoi](#)

Senior Fellow in International Economic Law and Director of the Investment Treaty Forum, BIICL

This blog post has also been published [here](#).

URL: <https://www.biicl.org/blog/53/44th-session-of-the-uncitral-working-group-iii-code-of-conduct-for-arbitrators-its-enforcement-corruption-allegations-in-isds>
