



Reflecting on a Year Online:

Lessons from a survey of
international
investment negotiators

IISD REPORT



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Reflecting on a Year Online: Lessons from a survey of international investment negotiators

June 2021

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Acknowledgements

The authors would like to thank Sofia Baliño, Nathalie Bernasconi-Osterwalder, Sarah Brewin, Soledad Leal, Suzy H. Nikiéma, and Joe Zhang for their insightful feedback on this paper.

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1.0 Introduction

How do you negotiate online? In early 2020, officials and governments found themselves facing this question as the coronavirus pandemic led to in-person negotiations being paused indefinitely. For the first time, large global talks hosted by multilateral organizations moved online. Virtual negotiations were a necessity given the circumstances; the move online was framed as a short-term substitute to keep these processes moving during the pandemic. Yet virtual negotiations may endure long past the pandemic, given the climate emergency and longer-term trends toward more virtual meetings and heavier reliance on digital technologies. Whether they are temporary or permanent, it is important to examine the opportunities, challenges, and consequences of virtual negotiations.

At first glance, it seems as if virtual meetings could help to address long-standing asymmetries in attendance and participation in international processes. Many officials face hurdles to attending meetings in person, among them securing permission to attend from their ministry, getting a visa in time, paying for costly flights and hotels, and making time in their schedules. Attending virtual negotiations is easier, so there are many reasons to expect virtual negotiations to be more inclusive, with more countries and more officials attending.

However, even if more officials can attend, moving online could mean less engagement and interaction between delegations. There are no opportunities for introductions or informal coordination meetings during coffee breaks and no chance to share experiences or build rapport over meals. Since they are not out of their offices, delegates may be expected to complete other work while attending virtual negotiations, meaning they are not able to focus in the same way they would if they had travelled to the negotiating venue.

Moving online also has implications for the strategies that negotiators use to gather information, build coalitions, and reach compromises. If what matters often happens in the margins of a negotiation, what happens when there are no margins? How do you find like-minded countries, how do you introduce yourself to officials from other countries, how do you establish rapport, and how do you coordinate positions? How do you figure out who is drafting a new proposal or a compromise text?

In this paper, we offer preliminary answers to these questions based on a survey of officials participating in two negotiations in investment that have made the move to virtual sessions: the United Nations Commission on International Trade Law (UNCITRAL) Working Group III on investor–state dispute settlement (ISDS) reform and the Joint Statement Initiative (JSI) on investment facilitation, held among a group of members of the World Trade Organization (WTO). Given that the UNCITRAL and JSI processes have been underway for several years, our respondents are well placed to compare and contrast the dynamics of in-person and virtual processes. It is worth noting, however, that the JSI process only transitioned to negotiating mode during the pandemic in September 2020. Therefore, when we refer to



“negotiations,” this may include experiences of WTO members relating to the JSI “structured discussions” prior to becoming negotiations.¹

The paper proceeds as follows. In Section 1, we give a brief overview of the two negotiations we focus on here, as well as a description of our approach to the survey and the demographics of the respondents. Section 2 looks at the barriers to participation that delegates face with both in-person and virtual negotiations. Section 3 focuses on how delegates prepare for both types of negotiation, while Section 4 looks at who participates in these processes and how this might change with the move online. Sections 5 and 6 look at communication and the conduct of negotiations, respectively. In Section 7, we dig deeper into respondents’ overall impressions of the benefits and drawbacks of virtual negotiations. Finally, in Section 8, we look to the future, with a discussion of how respondents hope to see negotiations evolve, along with our suggestions for how virtual negotiations could be improved.

In short, we are left with the impression that, in many respects, the basic outline of negotiations—how delegates prepare, the role of the secretariats—has not changed drastically with the move online, with the exception of some technical and time zone-related barriers and, to some extent, the increased participation of delegates from capital. However, the less formalized, less tangible elements of negotiation that are nevertheless crucial to the process—informal meetings and communication between delegations, being able to “read the room”—are not easily replicated in an online setting.

1.1 UNCITRAL Working Group III on ISDS Reform

UNCITRAL Working Group III received a mandate to work on ISDS reform in 2017. Six sessions of the Working Group were held in person between November 2017 and January 2020, with each session lasting one week. Then in October 2020, the first virtual negotiating session was held, with a second virtual negotiating session held in February 2021. The Working Group resumed this session in early May, also online.

The mandate given to Working Group III focuses on procedural concerns rather than substantive standards in investment law. The reform mandate had three parts: “(i) first, identify and consider concerns regarding ISDS; (ii) second, consider whether reform was desirable in light of any identified concerns; and (iii) third, if the Working Group were to conclude that reform was desirable, develop any relevant solutions to be recommended to the Commission.”² The Working Group had reached the third part of the mandate, developing reforms, when the negotiations moved online in October 2020.

UNCITRAL Working Groups have a formally inclusive, multilateral structure. Each UNCITRAL Working Group has a rotating membership of 60 states, drawn from the entire membership of the General Assembly, while other states may participate as observers. While

¹ Of course, negotiations that have been virtual from the outset may evolve somewhat differently, and participants may come away with different views on the effectiveness of these processes. Given that we are in the early days of such negotiations, this certainly remains an area that will merit further research.

² UNCITRAL. (2017, December). *Report of Working Group III (investor-State dispute settlement reform) on the work of its thirty-fourth session, 27 November-1 December 2017* (A/CN.9/930/Rev.1). <https://undocs.org/en/A/CN.9/930/Rev.1>



arbitration practitioners have played outsized roles in previous UNCITRAL processes on arbitration, the mandate given to Working Group III in 2017 broke with this tradition to specify that “the deliberations, while benefiting from the widest possible breadth of available expertise from all stakeholders, would be *Government-led with high-level input from all Governments*.”³ The aim was to have a process led by governments, by officials from capital in particular, and the number of governments and officials did increase over time. An average of 89 states attended each session between 2017 and 2020, with 289 officials attending for governments on average.⁴ In the first online negotiating session, 134 states and 406 state officials were registered to attend—the highest registration numbers up until that point.⁵

The March 2021 work plan proposes an end date of 2025 for the ISDS reform project, with 15 more 1-week sessions between mid-2021 and completion.⁶ The work plan proposes four 1-week sessions taking place per year from 2022 to 2024. It also foresees 78 informal meetings between mid-2021 and completion that could take the form of intersessional meetings, drafting groups, joint work with other organizations, or webinars to support the Working Group. At the time of writing, it is not known if sessions after mid-2021 will be in-person, virtual, or hybrid, although the work plan proposes that the informal meetings allow for remote (virtual) participation to alleviate concerns about burdens on time and costs.

1.2 The JSI on Investment Facilitation

At the time of the WTO’s Eleventh Ministerial Conference (MC11) in Buenos Aires, Argentina, in December 2017, 70 WTO members endorsed a Joint Statement on Investment Facilitation for Development, where they announced plans for “structured discussions” for developing a multilateral framework on investment facilitation.

According to the joint statement, the framework would “improve the transparency and predictability of investment measures; streamline and speed up administrative procedures and requirements; and enhance international cooperation, information sharing, the exchange of best practices, and relations with relevant stakeholders, including dispute prevention.” In addition, the discussions would aim to “clarify the framework’s relationship and interaction

³ UNCITRAL. (2017, September 18). *Possible reform of investor-state dispute settlement (ISDS): Note by the Secretariat (A/CN.9/WG.III/WP.142)* <https://undocs.org/en/A/CN.9/WG.III/WP.142>, para 3. Emphasis added.

⁴ The low was 79 states and the high was 95 states. Data is from Anthea Roberts and Taylor St John (see n. 5), who coded and aggregated the lists of participants circulated in person at each session of the Working Group. For consistency, these figures do not include the European Union or Holy See as states, nor do they count any observers, that is, individuals not attending for states.

⁵ Roberts, A. & St John, T. (2020, October 13). *UNCITRAL and ISDS reform (online): Can you hear me now?* EJIL: Talk! <https://www.ejiltalk.org/uncitral-and-isds-reform-online-can-you-hear-me-now/>

⁶ UNCITRAL. (2021, March 17). *Workplan to implement investor-State dispute settlement (ISDS) reform and resource requirements: Note by the Secretariat (A/CN.9/WG.III/WP.206)*. <http://undocs.org/en/A/CN.9/WG.III/WP.206>, para 12.



with existing WTO provisions, with current investment commitments among Members, and with the investment facilitation work of other international organizations.”⁷

This was one of several JSIs that groups of WTO members announced at that event, along with JSIs on electronic commerce; gender; domestic regulation in services; and micro, small, and medium-sized enterprises. Of these, only the processes on investment facilitation and e-commerce anticipated a transition to negotiating mode after exploratory work, while the services talks were a spin-off from an existing multilateral negotiation. None of the JSIs are formal WTO processes, though participating WTO members have expressed their interest in eventually bringing these into the global trade body. However, whether this will take place remains unclear, given the political and legal questions involved. They are therefore conducted separately and in a different manner than WTO negotiations with a multilateral mandate, such as fisheries or agriculture. While negotiations were formally due to begin in March 2020, they only began in September 2020 due to the COVID-19 pandemic after a preliminary phase of structured discussions.

At the end of April 2021, the coordinator circulated a consolidated document (the “Easter Text”) as the basis for the negotiations from that point onwards. At the meeting held in April, delegations approved a revised schedule of meetings until the WTO’s Twelfth Ministerial Conference (MC12) in November/December 2021. Based on this schedule, on average, delegations would have meetings every two weeks, with the exception of the WTO’s annual August break.

1.3 Survey Design and Respondent Demographics

This paper is based on a survey sent to government officials involved in the UNCITRAL and investment facilitation processes discussed above. The goal of the survey was to understand the survey respondents’ perceptions of the differences between 1) the preparation for in-person and virtual negotiations; 2) the conduct of in-person and virtual negotiations; 3) the efficacy or quality of in-person and virtual negotiations; and 4) preferences for future negotiations. The survey had both multiple-choice and open-ended questions designed to solicit the respondents’ views in these four areas.

Using cloud-based software, we created an online survey and sent an email invitation to potential respondents—negotiators in both the UNCITRAL and JSI processes. Respondents were given the choice to complete the survey in English, French, or Spanish. The survey was sent to 171 developing country negotiators and 16 negotiators from Organisation for Economic Co-operation and Development member countries involved in the UNCITRAL process. From this group, we received 45 responses for a response rate of 26%. We additionally sent the survey to 53 developing country negotiators involved in the JSI on Investment Facilitation for Development and received 18 responses (a response rate of 34%). Readers may note that not every respondent answered every question, so the total number of

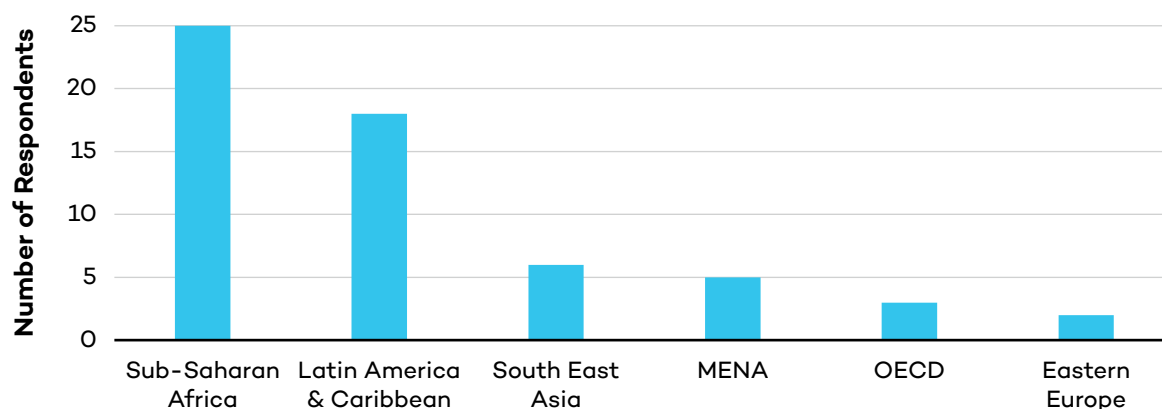
⁷ WTO. (2017, December 13). *Joint Ministerial Statement on Investment Facilitation for Development*. https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=240870&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True



responses per question varies.⁸ Readers should also note that if respondents were permitted to select more than one answer in response to a question, then we report raw numbers in this paper. If respondents could only select one answer in response to a question, then we report percentages in this paper.

We received survey responses from officials representing 40 countries and three regional organizations. Figure 1 breaks down the responses by region.

Figure 1. Respondents by region



The respondents came from a range of ministries and agencies, including economy and finance, trade and industry, investment and investment promotion, foreign affairs, attorney general offices and investment dispute defence teams, as well as from permanent delegations to the WTO. Table 1 shows the tasks that respondents’ ministries or agencies are responsible for.

Table 1. Which of these tasks is your ministry responsible for? Select all that apply.

Investment treaty negotiation	26
Investment dispute resolution	19
Investment promotion/facilitation	16
Trade	18

Finally, of the respondents who identified their gender, 56% were female, and 44% were male.

We also asked respondents to indicate how many in-person sessions they had attended. Below, we report the results for UNCITRAL negotiations and the JSI process separately.

⁸ The data analysis we present below is not meant to imply any statistically significant results. Rather, our graphs and tables are meant to serve an illustrative purpose, complementing the qualitative insights we have gained about these negotiating processes, challenges, and areas for improvement.



Table 2. Since 2017, how many sessions, not including online sessions, of UNCITRAL WGIII (out of the seven week-long sessions between 2017 and 2020) have you attended in person?

0 sessions	44%
1–2 sessions	28%
3–4 sessions	14%
5 or more sessions	14%

Table 3. How many sessions of UNCITRAL WGIII negotiations have you attended online?

0 sessions	47%
1 session (UNCITRAL WGIII October 2020)	52%

Table 4. How many WTO investment facilitation meetings have you attended in person?

0 sessions on investment facilitation	28%
1–2 meetings on investment facilitation	33%
3–4 meetings on investment facilitation	11%
5 or more meetings on investment facilitation	28%

Table 5. How many WTO investment facilitation meetings have you attended online?

0 sessions	8%
1–2 meetings on investment facilitation (September–December 2020)	8%
3–4 meetings on investment facilitation (September–December 2020)	84%



2.0 Barriers to Participation

The literature on developing or small states/WTO members in international negotiations cites a number of barriers to effective participation, including access to financial resources, technical capacity, and expertise.⁹ While the move online cannot be expected to alter all of the barriers faced by states participating in international negotiations, certain difficulties may be either reduced or exacerbated by the chance to attend virtually.

2.1 Barriers to In-Person Participation

In-person participation in negotiations requires the mobilization of resources, time, and access to the locale in which the negotiations are taking place—all of which present possible barriers to participation, particularly for developing countries.

We asked survey respondents to select the barriers their delegations have faced when participating in traditional, in-person negotiations, allowing respondents to choose all applicable options. Sufficient funds for travel and accommodations were selected as a barrier by 30% of respondents, followed by “obtaining ministry approval for travel and participation” and “learning about meetings with adequate notice,” which were both selected by 14% of respondents. “Obtaining a visa” and “travel time/time out of office” were selected by smaller numbers of respondents, while 20% of respondents claimed to face no significant barriers to participation. Respondents also were able to write in other barriers, which included COVID-19 and poor preparation by their delegation.

2.2 Barriers to Virtual Participation

While virtual negotiations remove the necessity of obtaining permission and funds for travel and thus appear to solve problems of accessibility and inclusivity, moving online presents other barriers to participation. According to our survey respondents, these include primarily technical and scheduling challenges.

We asked survey respondents to select the barriers their delegations face when participating in virtual negotiations, allowing respondents to choose all applicable options. Time zones and “competing priorities at work” were both chosen by 24% of respondents. Technical challenges were also relatively frequently cited, with “unreliable or no internet connectivity” and “computer equipment or software” selected by 12% and 10% of respondents, respectively. Other challenges, including learning about virtual meetings with adequate notice, were selected by fewer respondents.

⁹ Jones, E., Deere-Birbeck, C., & Woods, N. (2010). *Manoeuvring at the margins: Constraints faced by small states in international trade negotiations*. Commonwealth Secretariat.



3.0 Preparation

We then asked respondents both about how they prepare for meetings and how much time they spend preparing for in-person versus virtual negotiations. While the ways in which delegates prepare have not changed dramatically with the move online, respondents did report changes in the quality and amount of preparation.

3.1 Preparation for In-Person Negotiations

Survey respondents reported preparing for in-person negotiations in a variety of ways. Most frequently, respondents reported that they “meet with others in their ministry to discuss issues on the negotiating agenda” (30%). The UNCITRAL Secretariat produces working papers, and 29% of UNCITRAL respondents read these papers in preparation for the negotiations. Both UNCITRAL and JSI respondents reported meeting “with other ministries or agencies to discuss issues on the negotiating agenda” (28%).

It appears fairly common for respondents to engage with capacity building or informational sessions as well—24% of respondents reported that they attend capacity-building sessions and the same number reported attending seminars/webinars on relevant topics.

Delegations also prepare for in-person negotiations by writing prepared statements or briefs on specific negotiating issues (18%) and reading similar submissions from other states (18%).

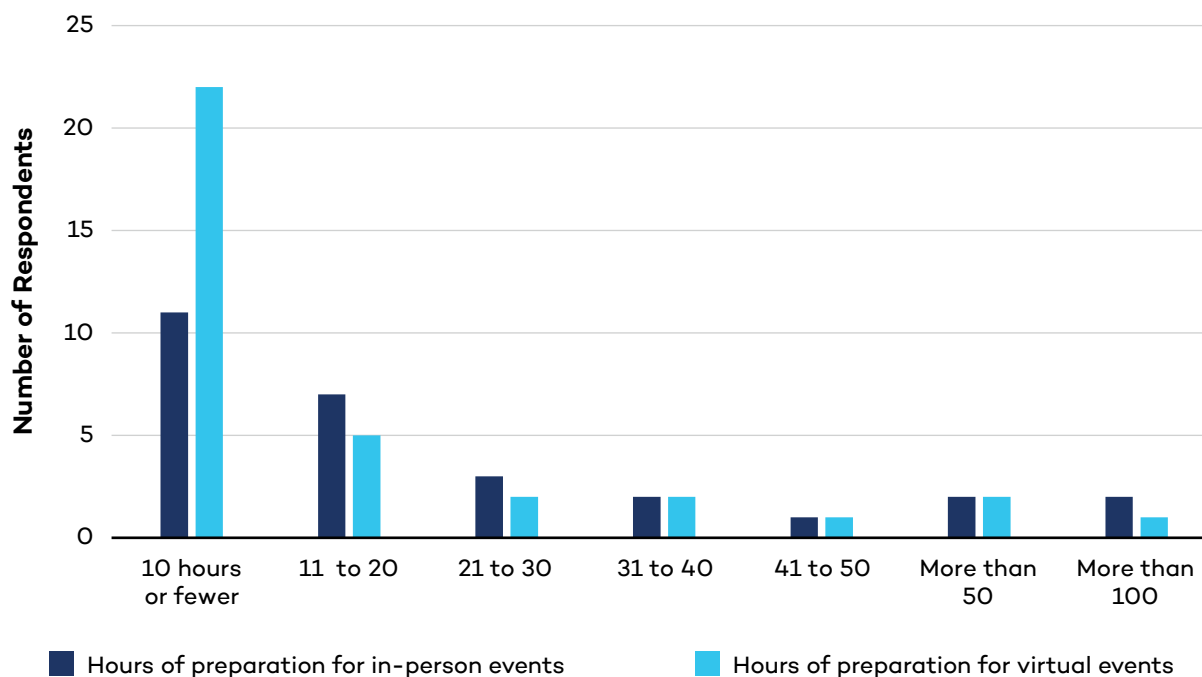
Finally, less commonly, delegations prepare by interacting with actors external to their own governments—14% of respondents reported coordinating positions with “like-minded states” while 7% reported meeting with domestic industry or civil society groups.

In an open-ended question, respondents reported a very wide range of hours of preparation, as Figure 2 indicates.¹⁰

¹⁰ Some of our respondents reported not having participated in in-person negotiations/discussions, which may partially account for the distribution of numbers in this chart.



Figure 2. Reported hours of preparation



Other respondents reported various other amounts of time spent on negotiations, including “12 hours per month between sessions,” “three hours per day,” and “about one hour per session.”

The amount of time spent on preparation, notably, was not clearly correlated with development level; the respondents that reported preparation time in the higher ranges were a mix of Organisation for Economic Co-operation and Development and developing countries.

3.2 Preparation for Virtual Negotiations

Respondents reported preparing for virtual negotiations in much the same way as in-person meetings. Thirty-one percent of respondents reported meeting, virtually or in person, with others in their ministry to discuss issues on the negotiating agenda, with the same number reporting meeting, virtually or in person, with members of other ministries or agencies.

A similar number of respondents reported reading the papers from the UNCITRAL Secretariat. Across both the UNCITRAL and JSI processes, more respondents reported reading the submissions of other states/WTO members when preparing for virtual negotiations (29%) than for in-person negotiations.

Twenty percent of respondents reported attending virtual capacity-building seminars, while 16% reported attending seminars or webinars to prepare for virtual negotiations.

As above, less commonly, negotiators prepare for virtual negotiations by interacting with actors external to their own governments—12% of respondents reported coordinating positions with like-minded states/WTO members while 5% reported meeting with domestic industry or civil society groups. In the context of UNCITRAL, one respondent noted that they specifically consult with other states within their regional organization.



As can be seen in Figure 2, in an open-ended question, more respondents reported spending lower amounts of time preparing for virtual negotiations. We then asked respondents directly, “Do you prepare more, less, or the same for online negotiations?” While 25% of respondents reported spending the same amount of time in preparation, 20% reported spending less time, with only 7% reporting spending more time in preparation for virtual negotiations. However, 21% of respondents reported beginning preparations earlier, while “I start preparing at the same time” and “I start preparing later” were both selected by 15% of respondents.

Finally, we asked the following: “Do you have any other thoughts on how your preparation is different for virtual negotiations? If you prepare differently, why do you think this is?” For those who felt their preparation had changed for the worse with the move online, two main themes emerged. The first was a sense that there was less (quality) interaction or connection with other delegations during the preparation process. For example, one respondent observed, “the difference I have noticed for the preparation for meetings is that I have held less bilateral meetings with colleagues from other delegations. When we participated in person during meetings, it was easier to approach other delegations and discuss informally. This is not the case now that we prepare virtually.” Another respondent concluded that they prepared less, in the sense that “I can’t share experiences, my country’s concerns, or discuss relevant issues with other delegations. I can’t attend capacity-building events that ‘refresh’ conversations that have been ongoing in the group since 2017.”

Respondents also reported feeling that they were less able to concentrate on preparations for negotiations when preparing in the (home) office. One official noted that “when I travel to a negotiation, I can dedicate this focused time and not be distracted by all the daily issues that occur in parallel.” Another respondent similarly reported that “my preparation is dependent on my free time. The other work of the Ministry is always urgent. I don’t have the choice.” In addition to competing priorities at work, another official noted that technical difficulties were “demotivating.”

On the other hand, officials reported finding ways to adapt and seeing some benefits. For example, one respondent noted that “preparation is slightly different in the sense that virtual meetings facilitate participation of capital officials, therefore, since they can participate directly, I don’t have to invest the same amount of time as if participation was in person. In in-person participation, I would have to cover all meetings; in virtual participations, we divide ourselves to cover the meetings, given the time difference between [our country] and Geneva.” Finally, another respondent noted that virtual connections were “becoming easier.”



4.0 Attendance

The move online could also shape who states/WTO members “send” to the negotiation table, whether in terms of size or composition of the delegation or their attendance altogether. This could, theoretically, be determined by lower costs or the greater availability of different officials to attend the negotiations.

To understand whether and how attendance had changed, we first asked respondents, “Do you think your state is more likely to have representatives present in virtual negotiations?” While 43% of respondents said they were “as likely” to have a delegation in attendance, 39% said more likely, and 18% said less likely. We then asked respondents who had indicated “more” or “less likely” to explain why. The most frequently given answers related first to cost and then to convenience. As one respondent noted, “virtual meetings are convenient since they don't require burdensome logistics like requesting for travel clearance, funding, visas, etc... In addition, they can be held simultaneously with other meetings allowing for our negotiators to participate and grow accustomed to the debates and discussions.” Another respondent reported that “representatives of the CARICOM Secretariat or capital-based officials of CARICOM Member States are more likely to attend virtual negotiations because of the unavailability of funds to support frequent travel.” Similar views were echoed by 10 other respondents. In the same vein, officials noted the ease of joining virtual meetings if some conditions are met; as one respondent explained, “virtual meetings do not involve travel and not much time is wasted prior to and after the meeting. Virtual meetings also do not have much financial considerations if there is internet connectivity.”

However, one respondent reiterated concerns about the quality of negotiations, already raised in response to the questions on preparation, reporting that “it's complicated, and at once ‘more’ and ‘less’ likely. More likely, because it's easier to go online than travel to Geneva... However, my perception is that the delegates from the capital see [virtual negotiations] as a task to delegate to more junior officials.”

We then asked respondents questions related to the composition of delegations. When we asked, “Do you think your state is more likely to have officials from multiple ministries present in virtual negotiations?” 50% of respondents claimed that this was more likely. In other respects, however, the respondents did not expect the composition of their delegations to change dramatically with the move online. When asked “Do you think your state is likely to ‘send’ a larger delegation if the negotiations are virtual?” 54% of respondents reported that their delegation would be the same size, while 37% said their delegation would be larger. Regarding gender composition, 88% of respondents reported that the gender balance would remain unchanged, while 10% said there would be more women among the negotiators. Similarly, 57% of respondents reported that the seniority level of the delegates would remain the same, while 26% thought that more junior officials would attend, and only 9% thought more senior officials would be involved in virtual negotiations.

Finally, we asked respondents, “In virtual negotiations, is the entire negotiating team expected to attend all virtual negotiations, or are sessions divided between colleagues?” Responses were fairly evenly split, with about half of the respondents answering that their entire negotiating team was expected to attend, while the other half reported that sessions were divided among colleagues, often according to availability.



5.0 Communication With Other Delegations

Communicating with other delegations is central to successful negotiation. During in-person negotiations, some of this communication happens in the formal discussions, but a lot of important communication also takes place in the margins. As delegates chat informally with each other during coffee breaks or over lunch, they share valuable information and figure out who might be possible allies. They exchange ideas and often speak more freely than they can in formal discussions.

How are these informal chats recreated in a virtual negotiation? To what extent have negotiators found ways to communicate informally with other delegations virtually? We asked respondents several questions about how they communicate with other delegations during in-person negotiations and during virtual negotiations.

5.1 The Importance of Informal Interactions

We asked respondents, “How important is speaking informally with officials from other countries (or other WTO members) during in-person negotiations?” Almost all respondents reported that speaking informally was either a high priority or one of many priorities. Seventy-two percent of UNCITRAL respondents and 64% of WTO mission respondents said it was a high priority, agreeing with the statement that “talking informally with other officials and getting to know them is an important part of negotiations.”

Table 6. How important is speaking informally with officials from other countries during in-person negotiations?

High priority. Talking informally with other officials and getting to know them is an important part of negotiations.	70%
One of many priorities. I try to talk informally with other officials, but it is not my top priority.	25%
A low priority. I do not meet or talk with many officials.	5%

We then asked respondents, “How important is meeting new officials (officials you have not met before) from other countries (or WTO members) during UNCITRAL Working Group III (or JSI investment facilitation negotiations)?” Sixty-five percent of UNCITRAL respondents and 50% of WTO mission respondents reported that meeting new officials was a high priority, agreeing that “getting to know other officials in this area is useful for my work.” One reason why a higher percentage of UNCITRAL respondents note that getting to know other officials is a high priority could be that many officials attending UNCITRAL are based in national capitals, and their primary role may not be as a negotiator; they may respond to disputes, for instance, and thus may not have had many opportunities to meet and share experiences with officials fulfilling similar roles in other governments. In addition, for those countries



with missions in Geneva, negotiators may have been able to previously establish personal relationships with their counterparts also based in the city.

Table 7. How important is meeting new officials (officials you have not met before) during the negotiations?

High priority. Getting to know other officials in this area is useful for my work.	61%
One of many priorities. I try to meet new officials, but it is not my top priority.	37%
A low priority. I do not go out of my way to meet new officials.	2%

Given how important these informal interactions are, a key question is how they could be replicated in a virtual environment. As elaborated in later sections, there is not much evidence to suggest these informal interactions are occurring virtually yet. One respondent noted that “virtual negotiations impede the exchange of ‘unofficial’ ideas that takes place in person. Ideas that are shared by writing become official positions and thus do not facilitate reaching a consensus. Exchanging opinions verbally is very effective in a negotiation.”

5.2 Means of Communicating: Talking, texting, emailing

Even though they are sitting in the same room, negotiators might text and email each other to coordinate positions or share reflections during in-person negotiations. Therefore, we asked respondents, “During in-person negotiations, how do you contact other negotiators?” They were able to select all that applied from a list of options. Talking in person was the most common, followed by text messaging or WhatsApp, then email, then calling them on the phone. Strikingly, at UNCITRAL, text messaging or WhatsApp (20 respondents) was almost as common as talking to other negotiators in person (27 respondents). Text messaging or WhatsApp was less common among WTO mission respondents, who were more likely to rely on email as their main virtual form of communication to other negotiators.

Table 8. During in-person negotiations, how do you interact with other negotiators?

Talking to them in person	39
Calling them on the phone	11
Email	23
Text messaging, WhatsApp, or other messaging	26
Other	4

While many respondents use text messaging or email during in-person meetings, it is possible that these delegations are sending messages primarily to arrange in-person meetings with one another, for instance, arranging where to meet during a coffee break. They may not feel comfortable sharing substantive views or outlining possible negotiating positions over email or text message. Therefore, we asked about the functions of email or text messages during



in-person meetings: “If you use email, WhatsApp, or similar apps, what functions do you use it for?” Respondents selected all that applied from a list of five options.

The most common response was “discussing what is happening or sharing reactions with other states (or WTO members).” Interestingly, this response was even more common than using text messages or WhatsApp to schedule times and places to meet other officials. Many respondents also use text messages or emails to coordinate statements or interventions. We asked if they did this in large group chats with other states/WTO members (4+ states/WTO members) or in bilateral chats or smaller group chats (2–4 states/WTO members), and interestingly, larger group chats were more common.

Table 9. If you use email, WhatsApp, or similar apps, what functions do you use it for? Select all that apply.

Scheduling times and places to meet other officials	17
Coordinating statements or interventions in group chats with other states (4+ states)	11
Coordinating statements or interventions in bilateral chats or small groups (2–4 states)	6
Discussing what is happening or sharing reactions with other states	18
I do not use WhatsApp to communicate with other officials	4

The willingness of many officials to share reactions, discuss what is happening, and coordinate statements or interventions in group chats or by email may make it easier for delegations to continue communicating informally during virtual meetings. If delegations are accustomed to texting or emailing each other during meetings, it would make sense for them to continue doing so even after the meetings moved online. Yet, it is also possible that delegations communicate differently during virtual meetings, so we asked them how they communicate during virtual negotiations.

The question was, “During virtual meetings, how do you contact other delegations?” Again, they were able to select all that applied from a list of options. Email was the most common option selected by both UNCITRAL states and WTO member respondents. Text messaging or WhatsApp was almost as common among UNCITRAL respondents; 19 use email while 18 use WhatsApp or text messages. Text messaging or WhatsApp was less common among WTO member respondents, with only five using text or WhatsApp. The negotiation platform’s chat function and calling on the phone or by Skype or Zoom were also used, although by fewer respondents than email or text messaging.



Table 10. During virtual negotiations, how do you contact other negotiators? Select all that apply.

The negotiation platform's chat function	16
Calling them on the phone or by Skype/Zoom/etc.	9
Email	28
WhatsApp or text message	23
Other	4

We also asked negotiators if the intensity of their contact with others is different in virtual negotiations. We asked, “During virtual negotiations, are you in contact with other negotiators more frequently, the same, or less frequently than during in-person negotiations?” At 70%, most UNCITRAL and WTO mission respondents reported that they were in contact less frequently.

Table 11. During virtual negotiations, are you in contact with other negotiators more frequently, the same, or less frequently than during in-person negotiations?

More frequently	4%
Just as frequently	26%
Less frequently	70%

There are many reasons why officials might contact each other less frequently when meetings are virtual. As we explore below, many officials are also expected to do other work since they have not travelled; they have competing priorities, are spending less time on the meetings, and therefore are less likely to contact others. Another reason one respondent noted is that having delegations spread across different time zones makes it more difficult to have fluid communication with other delegations.

5.3 Finding Allies and Planning to Cooperate

One of the strongest findings of the survey is that finding allies—in particular identifying potential new allies or governments who might have similar positions but officials with whom you have not worked before—is much more difficult in virtual negotiations. As one official wrote, “The biggest difference in virtual negotiations is that it is more complicated to form alliances.” The main reason for this is because many of these alliances or decisions to cooperate emerge from informal interactions, like a conversation during a coffee break or lunch break.

We asked respondents to “think about a recent time during in-person negotiations that you identified like-minded countries and decided to cooperate with them, by voting the same way or speaking in favour of their proposal or taking a similar action. How did this cooperation



come about?” Most responses echoed similar themes, even though respondents wrote their own answers.

Nearly half of all responses said they identified like-minded countries and decided to cooperate during a coffee break or what one respondent called informal “corridor discussions.” Having lunch or dinner together was also raised by many respondents, while others mentioned chance encounters like being seated next to each other or staying in the same hotel. Many responses emphasized the importance of informal conversations during breaks as times when they can speak more freely:

- “We usually talk during the breaks (with or without coffee). That’s when we can exchange opinions more directly.”
- “We spoke during lunch break and continued aligning positions by WhatsApp during negotiations.”

Some respondents explained why coffee breaks or other discussions in the margins were important for identifying like-minded countries and for negotiations generally:

- “Discussion during breaks is fundamental to the negotiating process. They are necessary to coordinate positions but also to ‘read the room,’ anticipate problems, anticipate new positions, read reactions using body language, adjust interventions along the way.”
- “During the break, ideas and knowledge or simply comments on what was presented are exchanged, and it is there where one can have a different opinion and make a deeper analysis of the proposals, knowing the opinion of the members.”

Other respondents mentioned informal lunch meetings among speakers of a particular language (both French and Spanish were raised) or capacity-building workshops that have preceded some negotiating sessions. These meetings provide a setting in which officials can get to know each other and gather more information, even exchange views, which provides a foundation for cooperation. Finally, a few respondents mentioned being involved in earlier negotiations together. Even here, though, respondents emphasized the importance of informal conversations: “It was not in person in the WGIII negotiations, but it was other negotiated deals and is actually informal conversations that are most conducive to agreeing [on] joint positions.”

We then asked a follow-up question, “Would this cooperation have happened in virtual negotiations? Why or why not?” most UNCITRAL respondents answered no to this question. The main reason given for this is that it would be difficult to identify who to cooperate with and figure out how to contact them.

- “No! Virtual meetings can also be distracting as you’re free to work on other work and are less immersed in the discussion/conversation. In addition, you lose out on seeing faces, following up directly with other states on issues or concerns, especially given that contact information may not be readily available.”
- “It would be difficult because we do not know who to contact!!!”
- “You do not know the relevant person and/or it is difficult to see them.”



A second theme that came up among respondents was that interaction was more limited in virtual negotiations, that human contact was missing, and this made it difficult to cooperate:

- “No interaction in virtual negotiations.”
- “Interaction is very limited. There is no way of identifying, talking, or exchanging ideas [in a virtual negotiation].”
- “In a negotiation, human contact is very important. It enables people to reconcile different points of view.”
- “Informal cooperation is less available during virtual negotiations.”

A third idea that came up in some responses was that to reach a consensus or negotiated agreement requires a “safe space” in which officials can feel comfortable discussing and trying out ideas before they are official positions, without putting them down on paper as formal precedents.

- “When something is written, it becomes a precedent and therefore states try to only write their official positions. To reach consensus requires a safe space to discuss in which parties are free to express new positions or new visions.”

A few UNCITRAL respondents mentioned that it could be possible to keep working together if a relationship had already been established and contact details had been swapped, but that it is difficult to imagine building a new connection in a virtual environment.

- “Yes but ONLY if the initial co-operation has been established in an in-person meeting. Making someone an ally works best in person.”
- “These exchanges are normally initiated during in person meetings. If this working relationship exists, it may be continued in virtual negotiations.”
- “No, I think in virtual negotiations people cannot cooperate actively as in in-person negotiations because during the break time attendees share views and get to understand more what they haven’t been able to catch very well.”

One respondent noted that it would be possible to organize meetings of like-minded states online, and their government might in the future, but it had not yet, and it was unclear if they would.

These two themes were echoed in responses from WTO member delegations. The first theme is that chance encounters do not happen in virtual environments, so it takes more work and planning to set up informal meetings. As one respondent put it, cooperation is still possible, “but it is much more complicated to coordinate a meeting and it is difficult to create an informal atmosphere.”

The second theme is that the real challenge officials face is identifying someone who might be interested in cooperating and contact them initially. It is possible to maintain an existing partnership virtually but much more difficult to start a new partnership. One respondent noted that “you can still have the conversations through video-conferences once you identify that initial cooperation interest.” Yet this same participant lamented that in-person follow-ups are not possible. Another respondent echoed this and explained that the absence of spaces



for informal chats made virtual interventions more rigid or fixed, whereas in-person follow-ups allow officials to soften or adapt an intervention. “In virtual negotiations it is much more difficult to ‘correct or adapt’ interventions. They are more inflexible. In person, you could approach someone who had a novel idea, or the secretary to clarify a point, etc.”

Responses from the WTO delegates tended to be more optimistic about the possibility of organizing cooperation or informal chats virtually. This could reflect that coalitions are better established in the WTO and in processes involving WTO members. In addition, more officials are based in Geneva or see each other regularly, whereas there are not long-established regional coalitions at UNCITRAL, and officials are less likely to see each other regularly. Yet even WTO respondents who are well-connected with colleagues note that cooperation “needs group meetings and discussions, and I have noticed a decrease of these informal meetings.”



6.0 Conduct of Negotiations

While every process of in-person negotiation is different, there are some basic expectations and conventions about the conduct of in-person negotiations that are widely shared. For instance, it is expected that negotiators focus primarily on the negotiations, that they are speaking primarily to others in the room, and that secretariats undertake a defined set of tasks to facilitate the negotiations.

How do these expectations change when negotiations move online? To what extent can negotiators still focus primarily on the negotiations? If more domestic actors are listening to the virtual negotiations, does it change what negotiators say or how they speak? Does the role of the secretariat expand or change in a virtual negotiation? We asked respondents these questions and others about the conduct of virtual negotiations.

6.1 Negotiating Alongside Day-to-Day Work

One of the strongest findings from the survey is that many respondents feel that they are not able to focus fully on the negotiations because they are also expected to complete other day-to-day work during the negotiations. As one respondent noted, “in virtual negotiations, the attention of each participant is divided between the meeting and its activities, and day-to-day work.”

Respondents emphasized that their attention was divided between day-to-day tasks and the negotiations in their answers to several questions, even when the question did not ask directly about it. Some respondents noted that while listening to the negotiations, they were interrupted by their colleagues or asked to complete other tasks since they were in the office.

We asked negotiators, “When you attend virtual negotiations, to what extent can you focus solely on the negotiations?” Nearly 50% of respondents reported that they were less focused during virtual negotiations than when they attend in person. Others reported that they were equally focused or even more focused in virtual negotiations.

Table 12. When you attend virtual negotiations, to what extent can you focus solely on the negotiations?

More focused than when I attend in person	13%
Equally focused	40%
Less focused than when I attend in person	47%

One respondent explained how virtual negotiations have both a positive and a negative effect on attention. The positive effect is that “in virtual negotiations, the speaker faces the camera, with their face visible, which makes it easier to see and concentrate on the speaker than in the face-to-face room sometimes.” At the same time, the negative effect is that “Interprefy [the negotiation software] must compete against many more rivals than in the negotiating room ... in the long run, statements in-person are listened to more carefully.”



6.2 Negotiating While Others Listen In

Virtual negotiations open up the possibility that individuals within the government who would not typically travel to the negotiations may listen in to them. One possibility is that both lower-ranking and higher-ranking officials may listen in to all or parts of a virtual negotiation. Another possibility is that officials from another ministry may attend. In some countries, multiple ministries are involved with investment policy-making, but only an official (or officials) from the lead ministry can attend in-person negotiations. In virtual negotiations, it is easier for officials from other ministries to listen in to all or parts of the negotiation.

It is possible that having superiors or other ministries does not change a negotiator's content or approach, but it is also possible that negotiators might change the content or style of their interventions. It could exert a chilling effect, or it could lead negotiators to “posture” more for the benefit of particular domestic audiences.

It is not just bosses who can log in; it is also junior officials. Virtual negotiations are a cost-effective way for officials to learn and gain experience. The attendance records from UNCITRAL Working Group III show that some governments are using virtual negotiations as an opportunity to “send” very large delegations: the Philippines registered 25 officials at the first virtual session in October 2020, while Kenya registered 15, Jamaica registered 8, Peru registered 12, Thailand registered 16, Turkey registered 16, and Venezuela registered 9.¹¹

If governments are registering larger delegations and even individuals who are not formally registered might be listening in, it could lead to a more inclusive group of people providing input during preparation or a wider group of speakers. We asked respondents: “Are different individuals likely to provide input during preparation if negotiations are virtual? Select all that apply.” Around half of all respondents said that there were no changes in who is likely to provide input. The other half responded that junior officials, capital-based officials, and/or female officials were likelier to provide input when negotiations were held virtually.

Table 13. Are different individuals likely to provide input during preparation if negotiations are virtual? Select all that apply.

Yes, officials based in the capital are likelier to provide input.	10
Yes, junior officials are likelier to provide input (in addition to senior officials).	16
Yes, female officials are likelier to provide input.	7
No, there are no changes in who is likely to provide input.	29

We then asked if different individuals were likely to speak in virtual negotiations. This question is especially relevant for governments that are not always able to send specialists from the capital to negotiations and instead rely on generalists from the nearest Permanent Mission. Here it is important to note that at UNCITRAL Working Group III, there has been

¹¹ Roberts & St John, 2020, supra note 6.



a concerted effort to help more expert officials from capital attend the negotiations.¹² Yet, even if states are able to send an official from capital to the negotiations, they might not be able to spare an official who is responsible for several issue areas. Or some individual negotiators may be less able to undertake long, repeated international travel because of family obligations or other circumstances in their lives.

Another possibility is that in addition to more junior officials being able to attend, virtual negotiations are also seen as a venue in which these officials are able to get experience speaking in international venues. Or it could also be that speaking at a negotiation loses some prestige if it is in a virtual format, which facilitates more speaking from junior officials.

Table 14. Are different individuals likely to speak for your governments if negotiations are virtual? Select all that apply.

Yes, officials based in capital are likelier to speak (rather than mission officials only).	12
Yes, junior officials are likelier to speak (in addition to senior officials).	12
Yes, female officials are likelier to speak.	6
No, there are no changes in who is likely to speak for my government.	32

While most respondents reported that there are no changes in who is likely to speak for their government, a few respondents noted that female officials are likelier to speak, and a sizable number reported that officials in capital and junior officials are likelier to speak.

The move to virtual negotiations seems to have prompted more speaking from capital-based officials in both negotiations, but the effect may be more pronounced in the JSI negotiations on investment facilitation. Since many governments were sending officials from capital to the UNCITRAL negotiations already, the same capital-based officials were speaking in person and online, whereas in the JSI process, some capital-based officials had not been able to attend in person. Many written responses about the JSI on investment facilitation noted that officials from capital took the floor more, with one noting that “the most important change is the more active participation from capital officials.” Another respondent noted that virtual negotiations have allowed a more diverse group of officials to attend, and even if not to talk, they listen and become conversant with the issues.

The participation of a wider pool of officials, including more junior and women officials, could also be facilitated by a practice of reading out pre-prepared remarks. From our observation of virtual negotiations at UNCITRAL, reading out pre-prepared remarks seemed more common, perhaps because officials needed to have their statement ready to email to the secretariat in case of any technical issues or to email to the translators to ensure smooth translation.

¹² The Travel Support Fund managed by the UNCITRAL Secretariat has helped to enable wider participation by officials from capital. This fund has received support from the European Commission, France, Germany, and Switzerland during the current mandate of UNCITRAL Working Group III.



Therefore, we asked respondents, “Are you more or less likely to read out pre-prepared statements in a virtual negotiation?”

The results here do not suggest a notable departure; most respondents reported that they are equally likely to read out pre-prepared statements in a virtual negotiation or an in-person negotiation.

Table 15. Are you more or less likely to read out pre-prepared statements in a virtual negotiation?

More likely	21%
Equally likely	57%
Less likely	21%

6.3 The Role of the Secretariat

How does the role of the secretariat change as negotiations move online? Or does it? In this section, we examine both the UNCITRAL and WTO secretariats while acknowledging that the two have very different functions, mandates, and approaches.

The ISDS reform negotiations at UNCITRAL have a chair and rapporteur, both of whom are state officials elected by Working Group III. The chair opens discussions, gives the floor to speakers, and summarizes discussions. Officials from the Secretariat rarely speak on the floor and typically only to address a technical or translation issue or announce that a new document is available. At in-person negotiations, delegates sometimes approach the dais to discuss an issue with Secretariat officials during a break. One of the UNCITRAL Secretariat’s important roles is to produce working papers as requested by the Working Group. These papers set out the issues for discussion, summarize state submissions on a particular issue, and cite other texts that the Working Group might want to use as a model. UNCITRAL negotiations generally take the form of states providing their views on the issues raised in the Secretariat’s working paper. The Secretariat takes note of states’ views, then refines its working paper and prepares a new version for subsequent negotiations, eventually preparing draft text for the Working Group to consider.

The JSI negotiations have a coordinator, which is the ambassador of one of the participating WTO members. This role is currently held by Chile. The coordinator circulates annotated agendas ahead of the meetings, updated schedules for planning purposes, and summaries of each session, all of which are available publicly. The coordinator also circulates updated versions of the texts being used in the negotiations (previously, the structured discussions), though access to these documents is restricted to WTO members, regardless of whether they participate in the JSI.

These documents are all available on the WTO’s Documents Online portal, with access restrictions varying depending on the document. This portal also includes proposals from WTO members. The WTO Secretariat’s role is more limited than in negotiations that are



formally housed in the WTO, with functions largely limited to tasks such as uploading documents to that online portal, running the Interprefy platform, securing simultaneous interpretation, and providing support to the coordinator and/or the members on their request. The Secretariat will occasionally publish press releases on the JSI negotiations, though often only to reflect the participation of the WTO Director-General if applicable or to include a brief meeting summary and excerpts from the coordinator’s remarks. Unlike UNCITRAL, the WTO Secretariat does not provide technical notes summarizing proposals, possible models, or lay out issues for discussion—its support in these types of tasks is only provided in those cases where members agree to request it.

A few respondents at UNCITRAL noted that since negotiations moved online, “it has been easier for the Secretariat and the Chair to determine the work agenda and the points of progress.” In the JSI on investment facilitation, some respondents thought the WTO Secretariat became more relevant in virtual negotiations because interventions from members needed to be presented to the Secretariat in a way that was more “frontal” and formal: “The role of the [Secretariate] is more relevant because it has a more active role in the organization of virtual meetings and in directing and advancing the discussions, as it is more complex to organize between delegations. Virtual negotiation is slower and much more ‘frontal,’ in the sense that each delegation presents its points to the secretariat in a more independent way.”

We asked respondents two questions about the role of the secretariat, listed below. The first is if the secretariat’s role is different in virtual negotiations, and the second is if they feel the UNCITRAL Secretariat is more or less influential (or WTO Secretariat more or less active) during virtual negotiations. While most respondents thought the secretariat’s role had not changed and that the UNCITRAL Secretariat was equally influential in virtual or in-person negotiations, there were quite a few respondents who thought that the WTO Secretariat played a more active role in virtual negotiations, consistent with the written comments.

Table 16. Do you think that the Secretariat’s role is different in virtual negotiations?

	WTO	UNCITRAL
Yes	33%	26%
No	67%	74%

Table 17. Do you feel like the UNCITRAL Secretariat is more or less influential during virtual negotiations?

More likely	21%
Equally likely	57%
Less likely	21%



Table 18. Do you feel like the WTO Secretariat plays a more or less active role during virtual negotiations?

More active	46%
The same	38%
Less active	15%

Finally, we asked respondents, “Were there any aspects of the move online that you think the Secretariat or Chair could have communicated more clearly?” Most reported no at UNCITRAL, and all respondents reported no for the WTO. Of those that responded yes, the concerns revolved around two issues:

- **Technology:** One participant suggested a technology manual.¹³
- **When information reaches governments:** One government noted that the UNCITRAL Secretariat could have better communicated the relevance of elaborating the Verbal Notes before the opening of sessions. Two governments noted that it would be helpful if the working papers were made available earlier, noting that sometimes “Working Papers are made available late, which complicates the preparation of notes for Ministers taking part in negotiations.”

We also asked respondents if they feel well-informed about the webinars or other discussions that occur between the sessions. As tables 20 and 21 show, most responded that they did receive all relevant information in a timely fashion. One respondent complimented the UNCITRAL Secretariat, noting, “they are very active in organizing events to ensure participation.”

Table 19. UNCITRAL: Do you feel well-informed about the webinars and other intersessional discussions that occur between the formal negotiating weeks?

I receive all relevant information in a timely fashion and am able to participate in everything I believe relevant for my government.	25%
I receive all relevant information in a timely fashion, but I am not able to participate in everything I believe relevant for my government.	53%
I do not receive adequate information, or I do not receive the information early enough.	22%

¹³ An Interprefy manual is available for WTO member participants.



Table 20. WTO: Do you feel well-informed about intersessional discussions that occur between the formal negotiating sessions?

I receive all relevant information in a timely fashion and am able to participate in everything I believe relevant for my government.	36%
I receive all relevant information in a timely fashion, but I am not able to participate in everything I believe relevant for my government.	50%
I do not receive adequate information, or I do not receive the information early enough.	14%

6.4 General Reflections

In case there were changes or concerns not covered by other questions, we asked respondents if anything has changed about the process or format of negotiations since they have been conducted virtually.

Table 21. Has anything changed about the process or format of negotiations since they have been conducted virtually?

	WTO	UNCITRAL
Yes	47%	38%
No	53%	62%

Respondents then elaborated on what, if anything, was different. These responses ran along three main themes:

- **Limited opportunities for informal discussions:** Several respondents echoed this theme, with one noting, “the biggest difference is that informal discussions—which are very important—happen spontaneously at in-person negotiations, and by contrast, need to be facilitated in virtual negotiations.” Another observed that “it is easier to get conversations going” at in-person meetings.
- **Limited opportunities, if any, to get to know the other negotiators and build relationships with them:** This makes the discussions feel more formal or “more serious,” less personable, and like “more work.” This was the most common theme, and responses here were consistent with the importance of human contact raised in response to other questions in the survey. One respondent put it plainly: “No new relationships are built in virtual negotiations.”
- **Less negotiating time:** When UNCITRAL Working Group III meets in person, there are six hours of negotiation per day, plus a two-hour lunch break that delegates generally spend in the building discussing with one another or attending seminars or meetings. When UNCITRAL Working Group III meets virtually, there are only four hours of negotiations per day for time zone reasons. There is a two-hour break between the first and second sessions, and while some delegates may spend this time corresponding with each other, it is much likelier that they spend this time doing other, day-to-day work.



7.0 Benefits and Downsides of Virtual Negotiations

7.1 Benefits of Virtual Negotiations: Lower costs, more participation

When respondents were asked what they saw as the benefits of virtual negotiations, two main benefits stood out. The first was lower costs, and the second was more participation. Many respondents mentioned these together, with one respondent putting it particularly succinctly: “less expense, more delegates.”

Lower costs were raised in most responses (“reduced expenditures for travel and accommodation”; “less costly, more people can participate per country”; “save budget”; “less costs, no need to travel”), with many responses noting that government budgets for travel were likely to be constrained in the wake of the pandemic. Lower costs were often mentioned alongside virtual negotiations being simpler or easier to attend and thus that virtual negotiations provided more flexibility. “Cost, ease, and access,” as one response put it; “flexibility” and “easy,” wrote others. Virtual negotiations are “more practical and simple.”

Lower costs and barriers to participation enable the second, related theme: wider access. Some responses noted that virtual meetings allow more member states to participate, while others noted it provided a chance for more agencies within governments to attend. Several respondents, especially from the WTO member survey, noted that virtual negotiations meant greater participation from capitals, which is especially important for countries that do not have resident missions in Geneva or smaller delegations.

- Virtual negotiations provide “greater accessibility for capital-based officials and officials from countries that do not have resident missions in Geneva”; “it allows a higher participation from delegations based in capitals.”
- “It is easier to move from one meeting to another, as part of a small delegation and in charge of many topics, diminishing commuting time has allowed me to participate in more negotiation meetings than in person.”
- “Capital officials get more involved since they have the chance to participate directly in the meetings. That gets them more engaged in the process.”

Yet even when listing the benefits of virtual negotiations, it was clear that some respondents saw them more as a temporary stop-gap or something that could complement in-person negotiations. A few respondents mentioned that virtual negotiations “keep the negotiation going” or “allow continuation of activities where flights are restricted.”



7.2 Downsides of Virtual Negotiations: Less informal interaction

When respondents were asked what they saw as the downsides of virtual negotiations, one downside—the lack of informal interactions—was the most common, echoing the concerns about finding allies in Section 5.3 above. Respondents noted that virtual negotiations meant “less contact with other countries’ officials”; “being less social, having less fun”; “less interaction”; “no personal contact; coordination more complicated, harder to get to know new colleagues.”

While less human contact or less informal interaction might seem superficial, many respondents elaborated on why this type of contact is integral to successful negotiations, noting how important getting to know other officials was for building trust, sharing information, and reaching compromises. As one respondent explained, “social interaction with other delegates is important. It is not the same to interact with them on a daily basis during in-person meetings than to interact through online platforms. It lacks the personal touch by participants.” Another respondent echoed the missing personal touch and pointed out this exacerbated the potential for miscommunications: “Less human interaction among negotiators. Many objections to text or proposals could be worked out among the delegates if they were in person and could have a frank discussion on the issues. I noticed that some objections are based on misunderstandings.” As a different respondent noted, virtual negotiations “do not enable informal or quiet diplomacy” that is crucial for resolving misunderstandings, coordinating positions, and reaching compromises.

Another reason why informal interactions are important is that they are perhaps where a lot of deliberation—that is, persuasion and reason-giving, the work of changing minds or finding compromises—actually occurs. Several respondents emphasized that virtual negotiations are more difficult “because there is not enough space to convince others or to be convinced” or because virtual negotiations “reduce our interactions with other countries and opportunities to elaborate our point of view or reconcile our different points of view.”

Many respondents emphasized that their chances to exchange ideas and information were minimized in virtual negotiations, which made coalition building or coordination much more difficult: “The opportunity to exchange some opinions and to strengthen cooperation ties is lost.” Other respondents connected this to less chance of forming new coalitions: “The exchange of ideas between delegations is not encouraged, nor are new coalitions or blocs formed.” This theme was also connected to limited opportunities, if any, to meet other officials: “Less personal contacts and exchanges. More difficult to meet new persons and establish new contacts.”

Other respondents noted that informal exchanges are also an opportunity to learn from one another, which does not exist in virtual negotiations. These observations are especially prominent among UNCITRAL respondents:

- “Personal contact is an opportunity not only for negotiation but also for exchange and learning. This is not the case with virtual negotiations unfortunately.”



- “Virtual negotiations don’t allow complete exchange of information and experience sharing among government officials.”

7.3 Additional Downsides: Less information, sidelining less active participants

Several respondents noted that they are not able to gather as much information in virtual negotiations, and this makes the stakes of the negotiation feel more abstract. They are not able to read the room and may have fewer (if any) informal discussions with like-minded states/WTO members, which makes the differences in view in the room less palpable. Another consequence of less information is that it may be more difficult for some delegations to identify which issues or specific provisions deserve their attention most or what implications these provisions might have.

A few respondents connected the lack of human contact to negotiations feeling more abstract, noting that it was harder to “appreciate the stakes” online. One respondent felt that the lack of contact between negotiators made virtual negotiations “much more abstract.”

Others mentioned that they were unable to “read the room” in a digital environment. “Virtual negotiations are more solitary, lonelier, I don’t know how to put it, but one does not have even a hint of the reactions of others, or even the possibility of reading others’ body language or reaction to ideas. In a virtual environment, one does not know what is happening in the room and that is always relevant information.”

Many negotiators believe they gather less information from a virtual negotiation. As one respondent noted, “we understand less” and “time is very limited.” In part, this is because of the absence of informal conversations and the inability to read the room, but a few respondents also noted a narrowing of who speaks in the room: “Virtual meetings have a way of sidelining less active members.”

There are several reasons why less active states/WTO members are sidelined. Perhaps some delegations are more affected by competing priorities. For instance, perhaps officials from larger or more powerful states/WTO members are able to specialize and focus on these negotiations, while officials from smaller states/WTO members have to balance a wider range of tasks. A few respondents stated that the main drawback to virtual negotiations was “interruption by colleagues and superiors during session, assignment of urgent tasks causing need to temporarily leave session, reduced ability to keep attention” or “since we are in our usual office, other activities take priority.”

Another possible reason is that some delegations are more affected by Internet connectivity issues than others. Only a few respondents raised Internet issues, but for those that did, they were a major concern: “There is a constant fear of the risk that the meeting will be interrupted if the connection is not strong enough.”

Finally, the effect of time zones also falls unevenly on delegations, which could be another contributing factor to the narrowing of voices in virtual negotiations. A few respondents stated that “time zones are the biggest drawback” or “main inconvenience.” The difference



in time zones is also a possible reason for less communication between delegations. Even if a negotiator has the contact information for other delegations, they may communicate less with them in part because they do not want to message them at inappropriate times.

These reasons may all contribute to why some respondents noted that virtual negotiations “do not seem to be as effective as in-person meetings” or that “face-to-face is more effective for a negotiation.” Others reported their sense that progress has become slower with the move online.



8.0 Moving Forward

8.1 What Phases of a Negotiation Might Work Well Online?

Negotiations are dynamic processes, often with multiple phases and substantial preparatory work. Intersessional meetings are common, often allowing for a different type of technical engagement in between the formal sessions in plenary.

Given this context, we considered that some aspects of virtual engagement could be more—or less—useful depending on the phase that a particular negotiation was in. For example, the JSI on investment facilitation transitioned from a non-negotiating mode to negotiations during the pandemic, providing a useful opportunity to compare the different phases of work in an online setting.

We, therefore, asked respondents, “What phases of a negotiation, if any, work well online? What phases do you think do not (or will not) work well online?” Their responses varied widely, from “nothing” to “anything.” Yet, there were some common threads that emerged in their feedback that could help inform how future negotiations are structured.

In particular, several respondents noted that preparatory phases would likely work well online. Some respondents elaborated, noting that preliminary phases in which negotiators are learning work well. By contrast, they indicated that later phases in negotiations, where compromises on difficult issues are usually required, may be less suited to an online setting. Examples of their feedback include:

- “Straightforward and more technical aspects of negotiations work well [online]. Political decisions which require more interpersonal relations and networking, not so much.”
- “Seminars and preliminary discussions work well online. Finding solutions on controversial issues (e.g., final stage of negotiation) does not work well online.”
- “The phases of a negotiation where proposals are being presented and interrogated [work well online].”
- “The training ones work well, the ones that include webinars and presentations. The negotiation ones themselves do not.”
- “Preliminary phases of the negotiation are better suited for virtual negotiations, while physical in-person negotiation would be preferred for advanced phases of the negotiation.”

One respondent outlined their views on why the later phases of a negotiation are less likely to work well online, observing that while it is possible to exchange information online, the deliberation and persuasion needed to strike compromises were unlikely to occur online. In their words, “while you can exchange positions online, in person you can really discuss and reach agreements.” Another noted that while formal meetings for information and procedural purposes work well online, “actual negotiation of text (removing brackets, finding landing zones) does not work well online.”



8.2 Hybrid, Fully Virtual, or Fully In-Person?

The pandemic led organizations to move to virtual negotiations as a temporary solution, yet there are many reasons why virtual or hybrid negotiations might continue long after the pandemic recedes. These reasons include the cost savings and increased ease and flexibility noted above, along with the possibility of engaging more with colleagues from capital. Virtual or hybrid negotiations may also need to continue in the medium-term due to the ever-changing nature of the public health crisis, especially since it seems likely that the pandemic may recede unevenly due to varying progress in vaccination programs and the selective removal of travel restrictions. This creates challenges for ensuring that these negotiations are inclusive, which we return to below.

Keeping these factors in mind, our survey sought to understand what format negotiators would prefer over the coming months and years. With a view to longer-term negotiations, we asked, “Once in-person meetings are possible again, would you prefer fully in-person negotiations, hybrids, or a continuation of virtual negotiations? Why?” UNCITRAL respondents were split evenly between in-person negotiations and hybrid negotiations. Meanwhile, all but one of the JSI respondents preferred some form of hybrid negotiation. No respondent preferred a continuation of virtual-only negotiations.

Respondents who favoured hybrid negotiations usually interpreted that term to mean that some meetings were virtual while others were in-person (and not that some delegates were online and some were in person).¹⁴ Respondents noted:

- “Hybrid is better options since we can move with virtual meetings and leave the hardest topics for in-person negotiations”; “hybrid meetings would be important given some of the equalizing factors of virtual meetings. However, in-person meetings should still hold primacy”; “hybrids, as it enables reduction of costs and time for less significant meetings. The in-person negotiations are irreplaceable in critical and substantive phases.”
- “A good balance of both would be a positive way forward. Some meetings for information purposes, or presentation of proposal without real debate could be easily held online, without the need for delegates to rush into an in-person meeting.”
- “In-person negotiations for rounds in which decisions are required; virtual negotiations for training or early rounds and intersessional meetings.”

Several responses supported hybrid negotiations for cost reasons: “I would prefer hybrid meetings. Some parts of the negotiations do not need to be in-person meetings. In addition, this could save costs for the state during the pandemic.”

A few respondents interpreted the term “hybrid” to mean that some delegates would be in the room while others would be listening from capital. This response was more common from JSI respondents, for instance: “A virtual add-on should be a feature to facilitate the participation

¹⁴ Although the sessions held during the pandemic have been primarily virtual, it is worth noting that some participants, mostly secretariat officials and officials from permanent missions in Geneva (WTO) or Vienna (UNCITRAL), have attended these sessions, or some of these sessions, in-person.



of capital-based officials or officials from countries that do not have resident missions in Geneva. These officials may find it difficult to travel regularly to Geneva.”

The variation in responses may have resulted from how these respective processes work in non-pandemic times, as described earlier in this paper.

Responses that favoured fully in-person negotiations typically emphasized the importance of meeting new officials and developing relationships with them that enable exchanging experiences and information.

- “I would prefer in-person negotiation because it provides space for sharing experiences.”
- “I prefer negotiations entirely in person. We have the possibility for real exchanges and interactions.”
- “In person because consultations [and informal discussions] outside negotiations make it possible to find compromises.”

A few respondents also noted that they are able to focus more during in-person meetings: “I would prefer in-person because I would be able to focus only on the meeting and discussions taking place, and would be able to share positions with other delegations.”

8.3 Recommendations for Improving Virtual Negotiations

Given that some type of virtual negotiation will inevitably continue, at least in the coming months, we asked respondents, “What would be most helpful to enable you to participate more fully in virtual negotiations?” This question led respondents to make suggestions for both their governments and secretariats, which we summarize below.

Recommendations for Governments

1. Minimize distractions or competing priorities for officials; treat officials attending virtual negotiations as though they are at an in-person meeting; expect to receive an out-of-office reply if they are emailed

Minimizing competing priorities was the most common suggestion from respondents to help them participate more fully. For example, one respondent wanted “a chance to dedicate [themselves] exclusively to the negotiations at least during the meetings.” Similarly, another respondent sought “better internet and fewer distractions from competing work engagements.”

One respondent suggested that invitations to government could clarify that the individual or individuals attending the negotiations would be expected to participate as though they were attending in person: “Invitations should be addressed to the head of the ministry identifying and giving the name of the participant and stating [the] importance of her/his consistent presence and participation.”



2. Use virtual negotiations as an opportunity for officials from capital to participate formally, even if they have not attended in-person negotiations

Virtual negotiations can also be an opportunity for officials from a wider range of ministries to observe negotiation processes and learn about the issues under negotiation.

3. Ensure negotiators have the IT equipment needed to contribute

Several respondents mentioned that a more reliable Internet connection would help them participate. The Secretariat IT staff could ask negotiators to use a headset (headphones with a microphone) when they make interventions; governments should ensure negotiators have headsets.¹⁵

Recommendations for Secretariats

1. Enable informal contact in a virtual environment by sharing contacts

The first and most fundamental support function of the secretariat is helping negotiators contact each other. Secretariats can collect email addresses and other contact information or ensure that existing lists of contact details are updated regularly. This is already standard practice at the WTO Secretariat, for example, which regularly updates its list of “WTO Members & Observers” with the relevant contact details for the missions. Secretariats can also circulate these lists before each round of negotiation or remind delegations that this directory is available, thus enabling negotiators to contact one another more easily.

2. Enable informal contact by making the breaks in a virtual negotiation more like the breaks in an in-person negotiation, that is, an opportunity to chat with each other informally

Several respondents made suggestions along these lines: “something like lunch-time events with chat and video-call function and separate rooms to talk in smaller groups (maybe with proximity chat)”; “create unofficial meeting spaces, [even if] the reality is that these do not replace the face-to-face ones”; “have parallel rooms [perhaps for different regions or languages] to enable informal interactions.” Websites like “Wonder” that allow individuals to join small virtual circles and chat with each other could provide a virtual platform that recreates the physical space of a coffee break. Already, lunch meetings are common features among small groups in the JSI on Investment Facilitation for Development. An acknowledged limitation of this approach is that negotiators juggling multiple processes and commitments, especially those in smaller missions, may not have the time or resources to participate effectively in these breaks, if at all.

3. Enable more informal contact and also lessen the negative impact of time differences by condensing the meetings through shorter breaks

¹⁵ More detailed analysis of technical challenges and possible solutions is available in: Pigman, G. A. (2021). *Influencing outcomes in a changing environment at the WTO: A commonwealth development country perspective*. Commonwealth Secretariat.



Respondents brought up that meetings have started at 3 a.m. for some countries or ended at 2 a.m. for others, which could adversely affect participation from capitals. While informal groups traditionally meet during the lunch break, if it is possible in certain circumstances to condense the lunch break, that could help ameliorate time zone issues for capital-based officials. If it is not possible to shorten the lunch break, secretariats could instead help facilitate negotiators speaking informally to each other throughout the break (rather than go back to day-to-day work). The UNCITRAL Secretariat did create a virtual café during the lunch break; while no respondent mentioned this café specifically, it could inspire similar experiments in the future, such as informal virtual circles that run throughout any breaks.

4. Facilitate training sessions to familiarize delegates with the relevant software

Respondents found it nerve-racking to intervene if they believed there might be technical glitches. One way to help address this is to have a software practice session the week before negotiations. As one respondent wrote, “Have virtual previous preparations to avoid technical inconveniences that would make negotiations difficult.”

5. Ensure early communication of meeting schedules and documentation

Several respondents sought more advance notice, both about when meetings would take place and about substantive papers, if applicable. For instance, while the JSI negotiating schedule is circulated several months in advance, small group and informal meetings are planned with shorter notice, providing little time for participants to prepare and study the meeting documents.

Respondents asked for, when possible, “advance notice on when meetings will take place, with relevant documents shared ahead of time”; “working documents available a little longer before the meeting”; “information must arrive with a reasonable time to prepare for negotiations.”

6. Facilitate debate and conversation by making comments and questions visible

The Interprefy platform supports inclusiveness if the comments are visible to all. Respondents noted that “if the comments and questions posted on the platform during the meetings are accessible to all participants, not just to speakers,” it would help them better understand debates.



9.0 Final Reflections and an Eye to the Future

To conclude, we would like to provide some final reflections for governments to consider to enhance their negotiations.

First, as our survey showed, participants in negotiations are facing competing demands on their time, with limited capacity to address them. This problem is particularly acute for developing countries, which made up the vast bulk of our survey respondents. Developing country delegations often face severe staffing constraints. For them to participate meaningfully in negotiation processes and understand the issues at stake, having sufficient time to prepare for meetings and access to relevant negotiating materials well in advance are vital.

This is a recurring challenge for in-person and virtual processes. However, a tendency to increase the frequency of formal and informal meetings and sessions has manifested itself in the second phase of the pandemic, perhaps because time was previously lost, and travel and other logistical arrangements are no longer required.

States that experience capacity constraints should respond to this problem by demanding that the process remain manageable and that negotiating sessions be announced and texts distributed well in advance to ensure effective participation.

Second, the survey responses highlighted the lack of informal communication with other delegations as a problem. We would encourage negotiators to reflect on what steps they can take to create or recreate channels for informal communication. Certain informal practices that feel like natural, well-established routines at in-person sessions likely feel odd and require more work or advance planning to recreate in a virtual requirement. Yet, taking small steps to strengthen informal channels of communication might bring outsized benefits.

For instance, negotiators could schedule a call with a colleague from another country (or group of negotiators from various countries) that they used to meet in person. Initiating an informal conversation before the negotiating session might make it easier to continue the conversation over text messaging or email during the session, leading to more informal sharing of reactions or ideas. Seeing one another, even over video, may remind negotiators of previous experiences they have shared and build trust or encourage more sharing of reactions or informal thoughts. Equally, negotiators could schedule a call with a small group for just after the last session of the week in order to share reflections. A call like this is likely to result in all participants gathering more information, including a better sense of how others reacted to the recent proposals or discussions.¹⁶

Third, our survey responses identified the importance of meeting new officials, especially because staff turnover in this field can be frequent. Initiating contact with new officials participating in a negotiation process may be difficult in a virtual environment. Here we

¹⁶ Of course, this will not lessen the “Zoom fatigue” that many negotiators and other officials are likely feeling after a year of virtual meetings.



would encourage negotiators to reflect on what steps they could take to identify officials who may be like-minded or what situations may provide openings for them to initiate a virtual conversation. For instance, if another negotiator makes an intervention a delegate supports or finds interesting, they could contact them using Interpretify's chat function and ask for their contact information to continue the conversation. While steps like this are not a full replacement for informal in-person conversations, working to actively set up structures for informal interaction might lead to more information sharing and, possibly, cooperation.

Finally, while our survey respondents did not mention these considerations, we wish to raise two issues that may arise if virtual or hybrid negotiations become "the new normal." First, hybrid negotiations could introduce a new type of inequality or two-tier reality if some governments are represented in the room while other governments only participate virtually. This might emerge in the short-run since participants from some countries are likely to be vaccinated and able to attend negotiations in person at UNCITRAL or among WTO members in mid-2021, while participants from other countries may be unable to attend in person for much longer—a concern in the very near future particularly for WTO members in advance of the 12th Ministerial Conference at the end of this year. If a two-tier situation like this did emerge, it could exacerbate existing inequalities between countries and undermine the inclusiveness of the negotiations.

Second, hybrid negotiations could alter the lead negotiator's relationship to their domestic audiences. On the one hand, it would enable more monitoring of the negotiations by domestic audiences (including other ministries or higher-ranking officials). This could result in curtailing the discretion of negotiators, which might constrain their ability to reach compromises with one another. On the other hand, wider participation from other ministries or agencies could have the consequence of widening interest in the negotiations within the government, which could enable better preparation and foster policy coherence. Wider participation may require enhanced coordination to ensure that the government is speaking with one voice in the negotiation. Coordination may need to be enhanced between capital and Geneva- or Vienna-based negotiators or among different agencies to ensure policy coherence—or even within the ministry or agency in charge of the negotiations, depending on the issue at stake.

These reflections and recommendations are preliminary, based on negotiators' experiences during the first year of virtual negotiations. This survey is a first step to learning more about virtual negotiations, what opportunities and challenges they present for negotiators and governments, and how the conduct of negotiations differs online. As hybrid and virtual negotiations continue in the coming months and years, further study and reflection will be necessary to examine how negotiators, governments, secretariats, and others are adapting to virtual negotiations and to suggest how virtual negotiations can be inclusive and effective.

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Published by the International Institute for Sustainable Development

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