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Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its fifty-fourth session (Vienna, 23–27 March 2026)

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I. Introduction

1. At its fiftieth session in 2017, the Commission entrusted Working Group III with a broad mandate to work on the possible reform of investor-State dispute settlement (ISDS).¹ From its thirty-fourth to thirty-seventh session, the Working Group identified and discussed concerns regarding ISDS and considered that reform was desirable in light of the identified concerns.² From its thirty-eighth to fifty-first session, the Working Group considered concrete solutions for ISDS reform.³

2. At its fifty-eighth session in July 2025, the Commission: (i) finalized and adopted the UNCITRAL Toolkit on Prevention and Mitigation of International Investment Disputes; (ii) took note of the progress made by Working Group III; (iii) considered the operationalization of the Advisory Centre on International Investment Dispute Resolution (“Advisory Centre”); and (iv) decided to recommend to the General Assembly that additional conference time and supporting resources be allocated to the secretariat for a period of two more years, from 2026 to 2027, as outlined in document [A/CN.9/1217](#).⁴

3. At its fifty-second session in September 2025 (Vienna), the Working Group continued its work on ISDS reform, considering draft provisions 5 to 8 on procedural and cross-cutting issues in document [A/CN.9/WG.III/WP.253](#) as well as the draft statute of a standing mechanism for the resolution of international investment disputes in document [A/CN.9/WG.III/WP.239](#), together with issues relating to its structure and design in document [A/CN.9/WG.III/WP.256](#). At that session, the Working Group agreed to develop two separate statutes in relation to a standing mechanism, one for a first-tier standing body and another for an appellate standing body.⁵

4. The Working Group held its ninth intersessional meeting in November 2025 (Santiago), which focused on draft provisions 12, 18, 19 and 20 on procedural and cross-cutting issues.⁶

5. At its fifty-third session in January 2026 (New York), the Working Group resumed its deliberations on draft provisions 9, 10, 11, 11 bis, 12, 13 and 22 on procedural and cross-cutting issues based on documents [A/CN.9/WG.III/WP.253](#) and [A/CN.9/WG.III/WP.262](#) and considered the form and implementation of the draft provisions.⁷ After discussion on how to sequence its work, the Working Group further requested that sufficient time be allocated during the fifty-ninth session of the Commission to finalize a subset of the draft provisions on procedural and cross-cutting issues.⁸

6. The fifty-ninth session of the Commission is scheduled to take place in New York from 24 June to 9 July 2026, where the Commission is expected to finalize a

¹ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 264.

² The deliberations and decisions of the Working Group at its thirty-fourth to thirty-seventh session are set out in documents [A/CN.9/930/Rev.1](#); [A/CN.9/930/Rev.1/Add.1](#); [A/CN.9/935](#); [A/CN.9/964](#); and [A/CN.9/970](#), respectively.

³ The deliberations and decisions of the Working Group at its thirty-eighth to fifty-first session are set out in documents [A/CN.9/1004*](#); [A/CN.9/1004/Add.1](#); [A/CN.9/1044](#); [A/CN.9/1050](#); [A/CN.9/1054](#); [A/CN.9/1086](#); [A/CN.9/1092](#); [A/CN.9/1124](#); [A/CN.9/1130](#); [A/CN.9/1131](#); [A/CN.9/1160](#); [A/CN.9/1161](#); [A/CN.9/1167](#); [A/CN.9/1194](#); [A/CN.9/1195](#); [A/CN.9/1196](#); and [A/CN.9/1196/Add.1](#).

⁴ *Official Records of the General Assembly, Eightieth Session, Supplement No. 17 (A/80/17)*, paras. 137–147; 167–177; 188–211; and 284–293.

⁵ [A/CN.9/1238](#), para. 112.

⁶ The summary of the ninth intersessional meeting on ISDS reform submitted by the Government of Chile is contained in [A/CN.9/WG.III/WP.263](#) (in English and Spanish only). The revised text of draft provisions 5–8, 12, 18, 19 and 20 following the intersessional meeting is contained in [A/CN.9/WG.III/WP.262](#).

⁷ [A/CN.9/1239](#), paras. 16–106.

⁸ [A/CN.9/1239](#), paras. 107–112.

subset of the draft provisions on procedural issues and the Statute of the Advisory Centre, which was adopted in principle by the Commission in 2024.⁹

II. Organization of the session

7. The Working Group, which was composed of all States members of the Commission, held its fifty-fourth session from 24 to 27 March 2026 at the Vienna International Centre.

8. The session was attended by the following States members of the Working Group: Argentina, Armenia, Australia, Austria, Belarus, Belgium, Bolivia (Plurinational State of), Brazil, Bulgaria, Canada, Chile, China, Colombia, Côte d'Ivoire, Czechia, Democratic Republic of the Congo, Dominican Republic, El Salvador, France, Germany, Ghana, Greece, Hungary, India, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Kenya, Kuwait, Malaysia, Mauritius, Mexico, Morocco, Netherlands (Kingdom of the), Nigeria, Panama, Peru, Philippines, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Türkiye, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of) and Viet Nam.

9. The session was attended by observers from the following States: Algeria, Azerbaijan, Bahrain, Cambodia, Cameroon, Croatia, Cyprus, Denmark, Ecuador, Egypt, Estonia, Finland, Guatemala, Honduras, Indonesia, Kazakhstan, Lebanon, Lithuania, Mali, Malta, Myanmar, Namibia, Niger, Oman, Paraguay, Portugal, Qatar, Romania, San Marino, Slovakia and United Republic of Tanzania.

10. The session was also attended by observers from the European Union.

11. The session was also attended by observers from the following international organizations:

(a) *United Nations System*: International Centre for Settlement of Investment Disputes (ICSID) and United Nations Trade and Development (UNCTAD);

(b) *Intergovernmental organizations*: Asian-African Legal Consultative Organization (AALCO), Gulf Cooperation Council (GCC), International Organization for Mediation (IoMED), Organization for Economic Cooperation and Development (OECD), Permanent Court of Arbitration (PCA) and South Centre;

(c) *Invited non-governmental organizations*: Academic Forum, American Society of International Law (ASIL), ArbitralWomen, Asian Academy of International Law (AAIL), Belgian Centre for Arbitration and Mediation (CEPANI), British Institute of International and Comparative Law (BIICL), Centre for International Legal Studies (CILS), China Council for the Promotion of International Trade (CCPIT), China International Economic and Trade Arbitration Commission (CIETAC), Compliance Politics and International Investment Disputes (COPIID), Corporate Counsel International Arbitration Group (CCIAG), European Chinese Arbitrators Association (ECAA), Forum for International Conciliation and Arbitration (FICA), Institute of International Law (IIL), Institutio Ecuatoriano de Arbitraje (IEA), International and Comparative Law Research Center (ICLRC), International Institute for Sustainable Development (IISD), International Law Association (ILA), Inter-Pacific Bar Association (IPBA), Milan Chamber of Arbitration, New York International Arbitration Center (NYIAC), New York State Bar Association (NYSBA), Organisation of Islamic Cooperation Arbitration Centre (OIC-AC), Russian Arbitration Association (RAA), School of International Studies at the University of Trento (SIS), United States Council for International Business (USCIB) and Vienna International Arbitration Centre (VIAC).

⁹ *Official Records of the General Assembly, Seventy-ninth Session, Supplement No. 17 (A/79/17)*, para. 167.

12. The Working Group elected the following officers:

Chairperson: Mr. Shane Spelliscy (Canada)

Rapporteur: Ms. Natalie Yu-Lin Morris-Sharma (Singapore)

13. The Working Group had before it the following documents: (i) annotated provisional agenda (A/CN.9/WG.III/WP.264); (ii) draft statute of a permanent tribunal for international investment disputes (A/CN.9/WG.III/WP.259); (iii) draft statute of a permanent appellate tribunal for international investment disputes (A/CN.9/WG.III/WP.260); and (iv) structure and design of a standing mechanism for the resolution of international investment disputes (A/CN.9/WG.III/WP.256).

14. The following documents were also made available: (i) submission from the European Union and its Member States on certain aspects concerning the jurisdiction of the Standing Mechanism (A/CN.9/WG.III/WP.257); and (ii) submission from the Government of Singapore on certain aspects concerning the jurisdiction of the Permanent Tribunal (A/CN.9/WG.III/WP.265). In addition, an updated note by ICSID on a potential inter se modification of the ICSID Convention was made available.¹⁰

15. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Possible reform of investor-State dispute settlement (ISDS).
5. Other business.

16. Due to the liquidity crisis of the United Nations in Vienna, the meetings on Monday (23 March 2026) were held without interpretation and conducted in an informal manner. Discussions took place on the structure and design of standing mechanisms based on document A/CN.9/WG.III/WP.256.

17. Regarding the scheduling of the formal session, it was agreed that the deliberations on Tuesday and Wednesday would be dedicated to the draft statute of a permanent tribunal for international investment disputes (the “Permanent Tribunal”) in document A/CN.9/WG.III/WP.259, commencing from article 24. It was further agreed that Thursday and Friday would then be dedicated to the draft statute of a permanent appellate tribunal for international investment disputes (the “Appellate Tribunal”) in document A/CN.9/WG.III/WP.260, commencing from article 29.

18. The Working Group expressed its appreciation for the contributions to the UNCITRAL trust fund from the European Union, the Government of France, the Swiss Confederation and the Federal Ministry of Economic Cooperation and Development of Germany, aimed at allowing the participation of representatives of developing States in the deliberations of the Working Group, including through informal briefings and securing interpretation in informal sessions, all of which ensured that the process remained inclusive and fully transparent. The Working Group was further informed of a contribution from the Government of Canada, through the Canada Fund for Local Initiatives, which would be utilized to organize a workshop for African delegates in Rabat in early June on the implementation of ISDS reform. The Working Group expressed its appreciation for the contribution, and the Government of Morocco expressed its willingness to host the workshop.

19. The Working Group heard a proposal by the Government of Viet Nam to host the tenth intersessional meeting of the Working Group in Hanoi on 7–9 September 2026, in a hybrid format to address the topics of standing mechanisms and the calculation of damages. The Government expressed flexibility with regard to the detailed agenda, which would largely depend on the progress made by the Working

¹⁰ Available at: https://uncitral.un.org/sites/default/files/2026-03/icsid_-_updated_note_on_a_potential_inter_se_modification_of_the_icsid_convention.pdf.

Group at the current session. After discussion, the Working Group welcomed the Government of Viet Nam's proposal.

20. The Working Group took note of the reference to the UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution in article 13.28(6) of the Canada-Indonesia Comprehensive Economic Partnership Agreement concluded in September 2025.

III. Draft statute of a permanent tribunal for international investment disputes (A/CN.9/WG.III/WP.259)

21. It was reiterated that the deliberations on the standing mechanisms were without prejudice to the positions of delegations on the desirability of establishing such mechanisms and, if established, whether the respective States would become party.

22. At the outset, it was stressed that the design of the standing mechanisms should: (i) be financially sustainable, accessible and responsive to the needs of developing countries; (ii) promote legal certainty; and (iii) respect the sovereign choices of States, including those that did not wish to participate in, or have their treaties interpreted by, the standing mechanisms. Regarding the members of the tribunals, the importance of ensuring equitable geographical representation, gender balance and a clear nomination procedure was stressed.

23. Concerns were expressed about embarking on discussions on the operation of the Permanent Tribunal (article 24 and onwards) at the current session, as those discussions depended on newly or differently drafted articles earlier in the draft Statute that had yet to be discussed and unresolved issues such as structure and design (including scope, grounds for appeal, and jurisdiction) and composition (including selection and the number of members). Concerns were also expressed about the risk of deferring to the Conference of the Parties (CoP) significant issues, such as those that could contribute to judicial overreach. It was further mentioned that other aspects of the Statute would need to be clarified before discussing operational elements, particularly the budget. It was recalled that the Working Group had agreed that issues that had been resolved at previous deliberations should not be reopened, unless and to the extent necessary to adapt the text to the establishment of two separate bodies and their specific characteristics (A/CN.9/1238, para. 114). At the same time, it was clarified that the Working Group would return to issues on which no consensus had yet been reached at a later stage.

Article 24 – Financing

24. It was mentioned that the overall budget of the Permanent Tribunal could be substantial, which would depend, inter alia, on the caseload, the number of Tribunal members, the staffing of the registry, the seat and other operational factors. General reference was made to article 2, pursuant to which the Permanent Tribunal was to operate in a manner that was effective, affordable, accessible and financially sustainable. In that context, the needs of developing countries were emphasized.

Paragraph 1

25. There was general support for diversified sources of financing, provided that the independence and impartiality of the Tribunal were preserved and there was a sustainable balance among the different sources. It was said that fees for services paid by disputing parties to the Permanent Tribunal (“user fees”) should constitute the primary source of income, and that this could be supplemented by contributions by Contracting Parties and other sources.

26. It was clarified that “initial” contributions were intended to cover the set-up of the Tribunal, whereas “annual” contributions would cover its regular operations. It was suggested that such distinction might not be necessary and could be left to the CoP to determine.

Paragraph 2

27. It was suggested that the United Nations scale of assessment should be used to determine the contributions of the Contracting Parties. While the approach taken in the Advisory Centre was provided as a possible model, doubts were expressed about the need to adopt such level of granularity and whether the same approach was appropriate for the Permanent Tribunal since the institutions served different objectives and a different group of users.

28. Questions were raised about the second sentence, as it could potentially limit access for States facing economic difficulties. In response, it was pointed out that discretion was provided to the CoP to decide whether to limit or modify the rights or obligations and that circumstances leading to the default (including difficulties in transferring funds, for example, arising out of unilateral coercive measures affecting the banking sector, or force majeure) could be taken into account. It was said that the rights or obligations to be limited or modified could be further specified and should be different depending on whether the non-payment was repetitive.

Paragraph 3

29. There was support for the financing to be based primarily on user fees, following article 17 of the ICSID Convention. It was said that, with sufficient caseload, user fees could cover a substantial portion of the budget.

30. It was said that relying primarily on user fees would avoid the subsidization of claims by investors against States and reduce the burden of the assessed contributions. At the same time, the need to ensure accessibility, in particular for least developed and developing countries, as well as for small and medium-sized enterprises, was stressed. However, it was also pointed out that measures should be put in place to ensure that enhanced accessibility did not result in an excessive number of cases before the Permanent Tribunal.

31. Questions were raised regarding how user fees would be calculated and whether they would be fixed or vary according to factors such as complexity and duration of a particular case. It was further noted that translation, interpretation and other possible costs arising from the proceedings should be taken into account in setting user fees. Similarly, questions were raised on whether such fees would differ depending on the types of users.

32. It was suggested that user fees should not be utilized to directly remunerate the members of the Permanent Tribunal responsible for the dispute to avoid conflicts of interests and ensure their independence. It was said that user fees should be treated as general income of the Tribunal and not for a specific case.

Paragraph 4

33. Doubts were expressed about the Permanent Tribunal receiving voluntary contributions due to potential implications for impartiality and the risk of conflicts of interest. It was further said that the receipt of voluntary contributions should be subject to appropriate safeguards, including disclosure, and limits on who could make such contributions (for example, only Contracting Parties).

Paragraph 5

34. It was suggested that the budget, income and expenditures be subject to public disclosure and that timing and regularity of audits be specified.

Way forward

35. After discussion, it was recognized that a balance had to be achieved between providing clarity and specificity in the Statute and delegating certain authority to the CoP. The secretariat was requested to revise article 24 to reflect the following:

- The main source of financing would be user fees, which would be supplemented, if necessary, by contributions from Contracting Parties;
- In the establishment phase, assessed contributions by Contracting Parties would cover a significant portion of the budget (including installation costs) until the Permanent Tribunal generated user fees;
- The contributions of the Contracting Parties would be determined based on the United Nations scale of assessment;
- User fees would be determined by the CoP taking into account affordability and accessibility;
- The consequences of a Contracting Party being in default of its financial obligations (both assessed contributions and fees) could be left to the discretion of the CoP and detailed in the regulations;
- Voluntary contributions should be listed as a secondary source of financing with appropriate safeguards;
- The possibility of establishing trust funds should be mentioned; and
- Financial statements should not only be subject to regular audits but also made publicly available to ensure transparency of the operations.

Article 25 – Legal status and liability

36. Regarding the heading, it was suggested that reference be made to “privileges and immunities” instead of “liability.” It was noted that the Working Group may consider whether to establish the Permanent Tribunal within the United Nations system, which might impact the provisions on privileges and immunities (P&I).

Paragraph 1

37. It was agreed to include the word “international” after “full” in the first sentence.

Paragraph 2

38. It was clarified that a host country agreement would address, among other issues, P&I in the host State. It was also agreed that the first sentence would be revised to read: “The Permanent Tribunal shall be headquartered in [*host State/Government to be determined*]. The Permanent Tribunal shall conclude a host country agreement with [*host State/Government to be determined*].” It was further agreed that the paragraph would not need to include a sentence anticipating a possible relocation.

39. In response to doubts expressed about the need for the second sentence in paragraph 2, it was explained that the sentence merely signalled the possible coordination between the two bodies and was not prescriptive. In light of the differing views, the sentence was put in square brackets.

Paragraphs 3 to 5

40. The secretariat was requested to modify paragraphs 3 to 5 to align with the approach taken in article 9(4) to (7) of the Statute of the Advisory Centre (see [A/CN.9/1265](#)).

Paragraphs 6 and 7

41. It was questioned whether the approach taken in article 9(8) of the Statute of the Advisory Centre providing for functional immunity should apply to all persons mentioned in paragraph 6. It was stated that it might be necessary to accord broader P&I to members of the Permanent Tribunal and to the Registrar to ensure that they were free from any threat or intimidation. A suggestion was made to add at the end of paragraph 6 the phrase “of comparable rank.”

42. It was also questioned whether persons appearing in proceedings of the Tribunal as parties, agents, legal representatives, witnesses or experts should be accorded the same level of P&I as those referred to in paragraph 6. The need to include other persons possibly involved in the proceedings (for example, interpreters and support staff) was also raised. It was observed that P&I to be accorded to such persons should be detailed in the host country agreement.

43. After discussion, the secretariat was requested to prepare a revised text specifying different levels of P&I for: (i) members of the Tribunal and the Registrar (diplomatic immunity similar to that provided to members of diplomatic missions); (ii) members of the Bureau and staff members of the Registry (functional immunity as provided in article 9(8) in the Statute of the Advisory Centre); and (iii) legal representatives, experts, witnesses or any other person required to be involved in the proceedings (treatment as necessary for the proper functioning of the Permanent Tribunal in accordance with the host country agreement or other agreements providing for P&I).

Article 26 – Reservations

44. The Working Group agreed to discuss this article at a later stage, as it would depend on issues of scope and jurisdiction of the Permanent Tribunal and the Appellate Tribunal.

Article 27 – Depository

45. It was agreed that the Secretary-General of the United Nations should be requested to function as the depository of the Statute.

Article 28 – Signature, ratification, acceptance, approval, accession

46. The Working Group approved article 28 as drafted.

Article 29 – Right to vote

47. Support was expressed for paragraph 2 in its current form. However, it was suggested that a regional economic integration organization (REIO) that was a Contracting Party to the Statute should be able to exercise its vote in addition to member States of the REIO that were Contracting Parties to the Statute. This was in light of the fact that the known REIO with competence in ISDS was expected to be a user of the Permanent Tribunal as a respondent and to make contributions like any other Contracting Party. On the other hand, concerns were reiterated about conferring the right to vote to an REIO as a Contracting Party, in addition to votes conferred to the member States of the REIO.

48. It was said that there should be no duplication or amplification of voting power. And it was suggested to add, at the end of the first sentence, the phrase “and are present and duly accredited” to ensure the REIO and its member States do not wield additional voting rights. Questions were raised about the need for such inclusion, particularly as it touched upon the voting procedure (quorum, representative with authority to vote) and as the Statute did not provide for any accreditation process. It was noted that if paragraph 2 were to be retained, article 4(8) would need to be revised for consistency. It was agreed to revisit the matter at a later stage.

Article 30 – Entry into force

49. It was said that the threshold for entry into force should take into account, among others, legitimacy of the Permanent Tribunal, its long-term financial sustainability, and broad participation reflective of geographical diversity. It was said that a sufficiently large membership would help to ensure that the decisions that would be made by the CoP in the initial period, including the appointment of Tribunal members, would have legitimacy, and distribute financial burdens of Contracting Parties before user fees become a viable financing source.

50. In addition to a minimum number of instruments of ratification, other thresholds for the entry into force were suggested, including: (i) the number of investment treaties listed in notifications submitted by Contracting Parties; (ii) the number of perfect matches, including those providing for exclusive jurisdiction; (iii) a minimum number of Contracting Parties from each regional group, with reference made to article 11(4)(b); and (iv) a minimum amount of assessed financial contributions. However, it was mentioned that if the Secretary-General of the United Nations were to function as the depositary, it would be difficult to make such additional determinations. It was also noted that the number of Contracting Parties or treaties listed did not offer a reliable basis for predicting the caseload. It was observed that requiring a significant number of Contracting Parties would likely satisfy several of the proposed criteria.

51. It was suggested that the Permanent Tribunal should become operational as soon as possible, thereby generating momentum and incentivising other States to join. It was suggested that the deposit of 10 to 30 instruments of ratification would suffice, with the Tribunal initially operating with a small number of Tribunal members and then expanding further. Reference was made to the ICSID Convention, which entered into force with 20 ratifications (at the time of adoption, the World Bank had 102 member countries).

52. On the other hand, it was emphasized that the threshold should be significantly higher, such as 60, 75 or more instruments of ratification. Reference was made, for instance, to the ITLOS Statute, which required 60 ratifications (at the time of its adoption, the United Nations had 155 Member States). It was said that a low threshold would enable a small number of Contracting Parties, which could be limited to one geographical region, to take key decisions, including the selection of Tribunal members and amendment of the Statute, before broader and more representative membership was achieved. It was also noted that a lower threshold would diminish the legitimacy and efficiency of the Tribunal.

53. After discussion, there was general support for the entry into force being based solely on the number of ratifications, with the number to be determined at a later stage. The Working Group agreed to discuss at a later stage the link between the entry into force of the Statute of the Permanent Tribunal and that of the Appellate Tribunal, considering that this was also linked with whether an appeal to the Appellate Tribunal would be the exclusive remedy in respect of decisions of the Permanent Tribunal.

Article 31 – Amendments

54. With regard to paragraph 2, questions were raised whether the adopted amendment should enter into force only after “all” Contracting Parties had deposited their instrument ratifying the amendment. In response, it was stated that an amendment should enter into force only for those Contracting Parties that had expressed consent to be bound by it.

55. However, it was said that a more flexible approach could be considered, such as granting the CoP the authority to decide certain issues or establishing different rules for entry into force of amendments (see, for example, article 108 of the United Nations Charter). The secretariat was requested to prepare possible options for the entry into force of the amendments.

56. It was noted that if the Permanent Tribunal and the Appellate Tribunal were to be linked functionally, a coordination mechanism should be established for any amendments to, or withdrawals from, the respective Statutes. It was also noted that this article was linked to other articles that had not been resolved, such as jurisdiction and the scope of appeal.

Article 32 – Withdrawal

57. With respect to paragraph 1, views diverged on the appropriate notice period. Concerns were expressed over potential abuse, for example, with a rush of claims

made by investors in the event of a long notice period, or in the case of a short period of 30 to 60 days, preventing a claimant investor from raising a claim where there was an applicable cooling-off period.

58. With respect to paragraph 2, it was generally recognized that withdrawal should not affect pending proceedings and cases where there had already been consent to the jurisdiction. The secretariat was requested to further develop the paragraph to address the consequences or effect of withdrawal on consent given by a Contracting Party or Parties to the jurisdiction of the Permanent Tribunal.

59. It was said that the consequence of any withdrawal on (i) the modified treaty (for example, where the two Contracting Parties had agreed to exclusive jurisdiction by listing the same underlying treaty) and (ii) the availability of other dispute resolution options under the underlying treaty after withdrawal (including those that had been available before modification) would require further consideration. It was stated that the consequences should be clearly set forth.

60. In that context, the extent to which unilateral withdrawal would be permitted was questioned. It was suggested that some elements might be more appropriately addressed under article 14 and/or possible modification of the Contracting Party's notifications, rather than in article 32.

Dispute settlement clause

61. A suggestion was made to include an article concerning the settlement of disputes relating to the interpretation or application of the Statute (for example, article 119(b) of the Rome Statute). In response, it was questioned whether such a clause was necessary, considering that such disputes could be resolved, for example, by the CoP. It was widely felt that decisions of the Permanent Tribunal, including those concerning the interpretation of the Statute, should not be subject to such a clause. It was suggested to place such a clause in the Multilateral Instrument on ISDS Reform (MIIR), so that disputes concerning the interpretation or application of a protocol would be handled by the CoP of the respective protocol.

Termination

62. It was agreed that the Statute did not require a termination clause.

IV. Draft statute of a permanent appellate tribunal for international investment disputes (A/CN.9/WG.III/WP.260)

63. It was widely felt that the deliberations of the Working Group with regard to the Statute of the Permanent Tribunal (see chapter III above) should apply *mutatis mutandis* to the Statute of the Appellate Tribunal. The Working Group therefore focused on issues specific to the Appellate Tribunal.

64. With regard to article 30, it was clarified that where a matter has been remanded to the first-tier tribunal or a newly established tribunal, such tribunal in the remand proceedings would not enjoy the P&I accorded to the Appellate Tribunal and its members.

65. With regard to article 35, it was stated that, if appeals from ad hoc first-tier tribunals were to be allowed, the entry into force of the Statute of the Appellate Tribunal would not necessarily need to be linked to the entry into force of the Statute of the Permanent Tribunal. It was further stated that, for States wishing to adopt both Statutes, coordination of the entry into force of the two Statutes would be beneficial. It was noted that uncertainty might arise regarding the recognition and enforcement of awards subject to appeal when the Statute of the Appellate Tribunal had not yet entered into force.

66. With regard to article 37, it was suggested that the consequences of withdrawal should be carefully assessed, including, for example, in situations where a

Contracting Party was a party to both Statutes and withdrew from the Statute of the Appellate Tribunal, which might preclude the exclusive recourse provided therein.

V. Structure and design of standing mechanisms for the resolution of international investment disputes (A/CN.9/WG.III/WP.256)

Scope and jurisdiction of the Permanent Tribunal

67. With regard to the scope and jurisdiction of the Permanent Tribunal, different views were expressed on: (i) whether the scope of disputes to be handled should be limited to international investment disputes (IIDs), left to the Conference of the Parties, or dealt with entirely in the instrument of consent; (ii) whether the term “IID” should be defined, possibly with reference to the different types of instruments of consent (or the basis of the claims) and along the lines of the definition provided for in the UNCITRAL Code of Conduct for Adjudicators in International Investment Disputes; (iii) whether it would be necessary to elaborate on the terms “international” and “investment”; (iv) whether the scope should be limited to treaty-based disputes (possibly drawing upon the scope of application in the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration) or be broader to cover investment contract and domestic legislation-based disputes (see also para. 71 below); (v) whether State-to-State dispute settlement should be covered and if so, how to capture such consent; and (vi) how to ensure that counterclaims (which may not have the same legal basis) would fall within the scope of the Permanent Tribunal.

68. With regard to the scope and jurisdiction of the Appellate Tribunal, it was viewed that the approach might be different as it was anticipated that decisions by the Permanent Tribunal as well as awards by arbitral tribunals would be subject to appeal. It was noted that the scope of disputes or the types of decisions/awards that could be subject to appeal would need to be clarified. A suggestion was made that the scope should be limited to awards rendered based on investment treaties, as one of the objectives of the reform was to achieve consistency and predictability with regard to dispute settlement under those treaties.

69. It was noted that for both Tribunals, the practical implications of the scope and jurisdiction on the financing thereof (cost-benefit analysis), the qualification of the judges (including whether they would be fit to address contract or domestic legislation-based disputes), the overall workload, the fees to be charged and to whom, as well the enforcement of decisions, would need to be taken into account. In this regard, the need to strike an appropriate balance between openness and manageability, as well as between flexibility and clarity in defining the scope of jurisdiction, was emphasized.

70. After discussion, it was generally felt that the scope of disputes to be handled by the Permanent Tribunal should be limited to IIDs.

71. There was broad support that the scope of jurisdiction should be IIDs based on investment treaties. This was viewed as being consistent with the core focus of the ISDS reform and aligned with the qualifications and expertise envisaged of members of the Tribunal. It was observed that certain disputes related to contracts and domestic legislation could be brought within the scope of an investment treaty, if consent to jurisdiction for such disputes was reflected in the treaty.

72. However, support was also expressed for extending the jurisdiction to IIDs based on investment contracts and/or domestic legislation. It was said that this would preserve party autonomy, accommodate various domestic arrangements for expressing consent, and offer the potential for generating additional revenue for the Tribunal. It was noted that excluding contract or legislation-based IIDs could deter some States from joining the Statute, particularly where investment relationships were structured primarily through such instruments. It was also said that the qualifications required of Tribunal members enabled them to adjudicate such disputes.

73. Concerns were expressed that inclusion of contract or legislation-based disputes might significantly increase the Tribunal's caseload and introduce legal complexities distinct from those arising under public international law or international investment law. It was emphasized that distinguishing among different categories of investment contracts would be challenging and that questions regarding the provision of consent in domestic legislation fell primarily within the scope of domestic law. Attention was drawn to the need to clarify which State bodies would be authorized to provide consent to jurisdiction, particularly if contract-based disputes were to be included. It was proposed to consider including a provision modelled on article 25(3) of the ICSID Convention.

74. It was suggested that jurisdiction could initially be limited to treaty-based disputes, with the possibility of later expanding to contract or legislation-based disputes by a decision of the CoP, which would not necessarily require an amendment of the Statute. However, doubts were expressed about leaving the discretion to the CoP, particularly as it could raise concerns as to the legal coherence and certainty of such an approach and negatively impact the predictability for users that consented to the jurisdiction beforehand. In that connection, it was suggested that States could, at the time of becoming Contracting Parties, indicate the types of disputes that would be subject to the jurisdiction of the Permanent Tribunal.

75. The secretariat was requested to provide different drafting options. One would be to limit jurisdiction strictly to treaty-based IIDs. Another would be where treaty-based IIDs would be within scope, with the CoP having discretion to broaden the scope to include IIDs based on contracts or legislation. Yet another would be where jurisdiction would extend to treaty-, contract- and possibly legislation-based IIDs, with the CoP having discretion to limit the contract- and legislation-based IIDs.

State-to-State disputes

76. The Working Group considered whether State-to-State disputes should fall within the jurisdiction of the Permanent Tribunal.

77. One view was that the nature of such disputes was distinct from that of ISDS and fell outside the mandate of the Working Group. It was mentioned that such disputes would be better addressed by other institutions, such as the International Court of Justice, as they mostly related to interpretation and application of public international law and involved different modalities, including with respect to the management of proceedings. It was also said that allowing such disputes before the Tribunal could politicize the decision-making process in the CoP generally, particularly the election process.

78. Another view was that the need for consistent interpretation of investment treaties was not limited to ISDS but also arose in the context of State-to-State disputes. Thus, such disputes should be allowed before the Tribunal as long as they related to investment issues. In that context, it was said that there might be merit in including such disputes if the scope of jurisdiction was limited to treaty-based disputes. It was also stated that such disputes should be included if investment treaties provide only for such disputes and did not allow ISDS. It was further stated that there was growing usage of SSDS to resolve IIDs. In response to the concerns about politicisation and different management of proceedings, it was suggested that this could be addressed through regulations adopted by the CoP, while doubts were raised about deferring such issues to the CoP.

79. It was pointed out that the different types of State-to-State IIDs (SSD), including the remedies available (for example, monetary claims) and the possible enforcement of decisions resulting therefrom, were aspects to consider for whether to include such disputes within the jurisdiction.

80. After discussion, the secretariat was requested to prepare text to include reference to "IID" as being a dispute between an investor and a State or any constituent subdivision or agency. It would further provide the option for jurisdiction

to extend to State-to-State disputes initiated pursuant to a treaty that provided for the protection of investments or investors but did not provide for an ISDS mechanism, subject to the consent by the treaty parties.

81. It was clarified that consent by Contracting Parties to the jurisdiction of the Permanent Tribunal via listing an investment treaty that provided for both ISDS and SSD mechanisms would be limited only on ISDS. In that case, SSD would continue to be handled by whatever mechanism was provided for in that treaty.

Exclusive jurisdiction of the Permanent Tribunal

82. The proposals submitted by the European Union and its member States ([A/CN.9/WG.III/WP.257](#)) and the Government of Singapore ([A/CN.9/WG.III/WP.265](#)) were presented, which set out different models for conferring exclusive jurisdiction to the Permanent Tribunal.

83. A wide range of views were expressed with regard to whether the jurisdiction of the Permanent Tribunal and the Appellate Tribunal should be exclusive. It was noted that the notion of “exclusivity” would be different for the two Tribunals and the discussion focused first on the Permanent Tribunal.

84. It was suggested that a cautious approach should be taken with regard to exclusive jurisdiction, in light of the need to preserve party autonomy and different options available to resolve disputes. It was said that a mechanism to opt into exclusive jurisdiction could serve that purpose. On the other hand, it was noted that the utility of establishing a standing mechanism would not be achieved if flexibility was retained in lieu of exclusivity.

85. It was suggested that another approach would be to provide Contracting Parties to the Statute a mechanism to opt out of the exclusive jurisdiction with the default rule being automatic exclusivity.

86. It was generally felt that exclusive jurisdiction should only be conferred when the parties to the instrument of consent expressly consented to such jurisdiction and that in the case of an investment treaty, both treaty parties would need to consent to exclusive jurisdiction (“perfect match”), which may be through the envisaged listing mechanism either on a default opt-in or opt-out basis. In that context, it was widely felt that consent to exclusive jurisdiction should be express and not be presumed, deemed or implied.

87. Questions also evolved around the means of expressing consent, the instrument through which consent would be given and the legal consequences that followed from such consent. Noting that the MIIR envisaged a listing system under which a protocol would apply only to those investment treaties listed by a Contracting Party in its notification, it was questioned whether the parties’ express consent to jurisdiction (including exclusive jurisdiction) might be more appropriately captured in the MIIR and not in the Statute(s).

88. It was said that requiring States to choose between exclusive and non-exclusive jurisdiction prior to the Permanent Tribunal becoming operational might be premature. It was stated that it would be preferable to have the Permanent Tribunal as an additional option for dispute settlement, leaving it to the disputing parties to agree on a case-by-case basis. On the other hand, it was said that exclusive jurisdiction was important to fully realise the value and impact of the Permanent Tribunal.

89. After discussion, the secretariat was requested to prepare text whereby exclusive jurisdiction could be conferred upon the Permanent Tribunal when the Contracting Parties had expressly consented to such jurisdiction either by way of opting in or opting out. The secretariat was further requested to consider practical approaches for capturing such choices in the notifications submitted by the Contracting Parties with respect to each treaty, with one possible way being to require the Contracting Party to expressly choose between exclusive and non-exclusive jurisdiction.

90. The secretariat was asked to consider whether additional text would need to be prepared to give effect to the choice of exclusivity along the lines of article II(3) of the New York Convention.

Imperfect matches

91. The Working Group considered the different scenarios in which the consent to the jurisdiction or exclusive jurisdiction did not match and the consequences.

92. One such situation would be when both treaty parties were Contracting Parties to the Permanent Tribunal but only one of the treaty parties listed the treaty (scenario 1). Another situation would be when one of the treaty parties was a Contracting Party to the Permanent Tribunal and the other treaty party was not a Contracting Party (scenario 2).

93. Regarding scenario 1 and where the investor of the Contracting Party that had not listed the treaty brought a dispute against the Contracting Party that listed the treaty, it was questioned whether the Contracting Party that had not listed the treaty would need to explicitly consent or whether a non-objection could be sufficient to confer jurisdiction. Regarding scenario 2 and where the investor of the non-Contracting Party brought a dispute against the Contracting Party that had listed the treaty, it was questioned whether the consent of the non-Contracting Party was necessary, given that both disputing parties had agreed to rely on the Permanent Tribunal.

94. While questions were raised on whether both scenarios should be considered a match at all, it was said that this would depend on how the relevant articles were drafted. It was stated that a treaty-based dispute should not be heard by the Permanent Tribunal unless all treaty parties had expressly consented to jurisdiction, regardless of whether they were Contracting Parties to the Permanent Tribunal. In support, it was stated that a treaty party should not be able to unilaterally modify the treaty, which might create an asymmetry between the protected investors, and that the Permanent Tribunal should not interpret a treaty involving a non-Contracting Party without its consent. It was observed that such interpretation could affect that State's rights and obligations under the treaty, as well as consistency of the treaty's interpretation.

95. On the other hand, it was recognized that certain investment treaties provided an option for the disputing parties to agree to any other dispute resolution forum, which would allow them to bring the dispute to the Permanent Tribunal. However, it was also said that such a clause should not be interpreted as permitting recourse to the Permanent Tribunal, which did not exist at the time the clause was concluded.

96. After discussion, the secretariat was requested to prepare text, which would allow the Permanent Tribunal to obtain jurisdiction or exclusive jurisdiction in the cases of an imperfect match. Such a text would provide a mechanism whereby the Contracting Party that had consented to the jurisdiction of the Permanent Tribunal would seek the consent of the other treaty party, either for all disputes arising under a certain treaty or on a case-by-case basis. It was said that the consent of the other treaty party should be express and communicated to the Tribunal or the Registry by the Contracting Party. The secretariat was further requested to consider how such a mechanism would work in the case of a plurilateral treaty, in particular whether the consent would need to be sought from all treaty parties or only from the relevant treaty party.

97. It was cautioned that such a mechanism might cause uncertainty for claimants, as they would not know the available dispute settlement options when they made the investment, including the possibility of initiating a proceeding before the Permanent Tribunal, which would depend on the consent of its home State. This would be particularly problematic in the case of exclusive jurisdiction.

98. The Working Group further considered the situation where the investor claimant (a national of the Contracting Party) brought a dispute against a non-Contracting Party

to the Permanent Tribunal and the non-Contracting Party consented to its jurisdiction. While it was viewed that such a dispute would fall under the jurisdiction as the disputing parties had agreed thereto and would be responsible for the costs, concerns were expressed that this might disincentivize States from joining the Statute, as they could benefit from the Permanent Tribunal without becoming a Contracting Party.

Scope and jurisdiction of the Appellate Tribunal

99. It was said that two separate statutes would allow States to freely choose either or both of the Tribunals and enable States that wished the Appellate Tribunal to hear appeals of awards rendered by arbitral tribunals to not necessarily become a Contracting Party to the Statute of the Permanent Tribunal.

100. A wide range of views were expressed. One was that the scope should be limited to decisions/awards resulting from treaty-based IIDs, while another was that it should be broader to cover disputes based on contracts or domestic legislation. However, doubts were expressed on whether the Appellate Tribunal would be the appropriate forum to handle the latter types of decisions/awards, for which the applicable law was often domestic law. In response, it was said that this was frequently the case in international arbitration and that limiting appeals only to decisions/awards resulting from treaty-based IIDs would pose problems when such decisions/awards had multiple bases. However, it was said that the key objective of the reform was to ensure consistency of awards relating to investment treaties. It was further said that the persons or entities authorized to bring an appeal should be clearly set forth (see para. 73 above). It was also suggested that only decisions/awards rendered after the entry into force of the Statute should fall within the jurisdiction of the Appellate Tribunal.

101. Regarding the timing, it was generally felt that the consent to appeal would need to be perfected before a decision/award was rendered. It was mentioned that rules to address the imperfect match could also apply in the case of the Appellate Tribunal (see para. 96 above). It was further stated that disputing parties should be able to consent to the jurisdiction of the Appellate Tribunal even after the decision/award was rendered.

102. It was generally felt that the scope and jurisdiction of the Appellate Tribunal could extend to appeals of: (i) decisions rendered by the Permanent Tribunal; (ii) ICSID arbitral awards; and (iii) non-ICSID arbitral awards.

Decisions by the Permanent Tribunal

103. It was said that the jurisdiction of the Appellate Tribunal should be as broad as or broader than the jurisdiction of the Permanent Tribunal, which would ensure that all decisions rendered by the Permanent Tribunal would be subject to appeal. However, it was questioned whether the Appellate Tribunal should be the exclusive recourse for all decisions by the Permanent Tribunal. The possibility of the Permanent Tribunal as a single tier mechanism was envisioned. It was also questioned whether the scope of the Appellate Tribunal should be broadened to decisions by any other adjudicatory body.

ICSID arbitral awards

104. Noting that the jurisdiction of ICSID was not limited to treaty-based disputes, it was questioned whether it would be possible and practical to limit the appeal of ICSID treaty-based awards only. It was stated that this could result in the fragmentation of the remedies available, with some being subject to appeal and others subject to annulment and complicate their recognition and enforcement. It was further mentioned that some ICSID awards had multiple bases, with the tribunal indicating the legal basis only in the final award. It was suggested that all ICSID awards should fall within the scope of jurisdiction of the Appellate Tribunal, yet among those Contracting Parties that had consented to the inter se modification of the ICSID Convention.

105. The Working Group heard a presentation by the ICSID Secretariat on a potential inter se modification of the ICSID Convention. At the outset, it was noted that the ICSID Secretariat was not taking any view on whether an inter se modification for the purpose of allowing ICSID awards to be appealed before the Appellate Tribunal would be legally permissible or advisable. Various questions were posed, including with respect to the relationship among the ICSID Convention, the MIIR, the Statute of the Appellate Tribunal and the possible protocol to the MIIR, which might capture the inter se modification. Questions were raised on whether the inter se modification would follow the same listing procedure envisaged in the Statute/MIIR or would be broader to cover all references to the ICSID Convention in treaties concluded by the Contracting Parties to the protocol. Issues relating to the enforcement of awards rendered under the ICSID Convention and the modified ICSID Convention were outlined. After discussion, the secretariat was requested to hold an informal session on those issues and to consider the way forward

Non-ICSID arbitral awards

106. Regarding non-ICSID arbitral awards, the secretariat was requested to prepare text which would be similar to the scope and jurisdiction of the Permanent Tribunal (see para. 75 above).

Exclusive jurisdiction of the Appellate Tribunal

Appeal to the Appellate Tribunal as exclusive recourse

107. Diverging views were expressed on whether recourse to the Appellate Tribunal should constitute the exclusive remedy for decisions by the Permanent Tribunal. One view was that flexibility should be given to the Contracting Party of the Permanent Tribunal to choose the appropriate remedy, particularly should it opt not to become a Contracting Party to the Appellate Tribunal. It was said that even if the State were to be a Contracting Party to both the Permanent and Appellate Tribunals, it might not necessarily wish to subject decisions by the Permanent Tribunal to appeal. Reference was made to article 26(1)(c), which allowed for reservations for such purpose. It was said that in such a case, existing remedies, including annulment or set aside in domestic courts, could be provided. A question was raised on whether a decision of the Permanent Tribunal could be set aside in some jurisdictions.

108. However, questions were raised about when a Contracting Party would make such reservation without providing for any other remedy, and the legal implications of such reservations. Concerns were expressed about the possibility of multiple remedies being available and further fragmentation. It was suggested that the reservation should be allowed only when the Contracting Party was not a party to the Appellate Tribunal and, when it did become a party, the reservation would no longer have effect.

Exclusivity of appeal as post-decision/award remedy

109. It was understood that exclusive jurisdiction of the Appellate Tribunal meant that recourse to the Tribunal would be the sole remedy with regard to the decision/award. It was said that this could be provided for in the Statute for decisions by the Permanent Tribunal and ICSID awards but not for non-ICSID arbitral awards as domestic legislation often provided for a set-aside procedure. It was said that Contracting Parties would need to ensure that awards subject to appeal were not subject to set-aside. In that context, it was suggested that an arbitration subject to appeal to the Appellate Tribunal should be seated in a Contracting Party, so that awards rendered would not be subject to domestic post-award remedies.

110. Questions were raised on the ways to provide for such exclusive jurisdiction, in particular how articles 14, 19 and 23 would interact. It was said that those articles provided different means of achieving exclusivity and should be better coordinated.

111. There was general support that once consent to the jurisdiction of the Appellate Tribunal had been perfected, appeal should be the sole available remedy to an arbitral award or a decision by the Permanent Tribunal. It was said that such a rule might be addressed in article 14 dealing with the jurisdiction of the Appellate Tribunal. It was further suggested that the rule could address different scenarios, including perfect or imperfect matches (for treaty-based disputes) as well as contract- and legislation-based disputes (see para. 75 above). However, it was said that if the Appellate Tribunal had jurisdiction over IIDs involving the interpretation and application of domestic legislation, its exclusive jurisdiction might discourage States from joining the statute.

112. In that context, it was observed that consent to appeal could be manifested in different ways, for example, in a treaty, a notification by a Contracting Party listing the relevant treaty or a dispute resolution clause in a contract. It was stated that becoming a Party to the Statute (or to the instrument containing the inter se modification of the ICSID Convention) would not automatically constitute consent to appeal. With regard to timing, it was said that consent to appeal should ideally be captured in the relevant instrument of consent prior to the dispute being submitted to the first-tier tribunal, but could also be captured after the decision/award was rendered by way of a *compromis*.

113. Questions were raised on how parties would express consent to the jurisdiction of the Appellate Tribunal in future treaties or contracts, including how reference to existing mechanisms (ICSID Convention or the UARs) would need to be tweaked.

114. Differing views were expressed with regard to the two alternatives in article 19. Alternative A was viewed as being more flexible, as it left the choice to the disputing parties and other remedies being excluded once the appeal was initiated. However, it was observed that such a waiver would not prevent the other disputing party from seeking remedies in other forums, which could lead to parallel proceedings. It was thus suggested that the waiver should be provided by both disputing parties.

115. With regard to waivers of the right to pursue other remedies as a condition for appeal, questions were raised as to how such waivers would interact with those already provided for in the underlying treaty, and whether they would be recognized by domestic courts in related proceedings, particularly by courts in non-Contracting Parties. It was suggested that an agreement to submit a dispute to appeal should itself constitute a waiver of the right to pursue other remedies.

116. Alternative B was viewed as being simple as it provided for automatic exclusion of other remedies when appeal was available. However, it was said that alternative B could only operate when there was a “perfect match” but not necessarily in an imperfect match scenario. A question was raised on which body would have the authority to determine whether a decision/award was subject to appeal.

117. Suggestions were further made that the two alternatives could be combined as they addressed different situations. The requirement of a waiver in Alternative A would govern the conduct of the disputing parties generally, as it would prohibit them from seeking other remedies. It was said that exclusivity could be given effect as the waiver would be binding on that party in a proceeding in a non-Contracting Party. It was said that the timing of the waiver would need to be further considered in connection with the consent to the jurisdiction of the Appellate Tribunal. It was also pointed out that a combination of the alternatives may address imperfect-match scenarios, including cases where the underlying treaty was not listed, where only one party had consented to the Statute, or where the seat of arbitration was located in the territory of a non-Contracting Party.

118. It was further suggested that the Statute should contain a rule that an arbitration subject to appeal to the Appellate Tribunal would need to be seated in a Contracting Party. In that regard, concerns were raised that such a rule might incentivize disputing parties, particularly in contract-based disputes, to choose seats in non-Contracting Parties to circumvent the appeal. It was questioned whether the rule could apply to

ICSID arbitrations, which did not have a seat of arbitration. In response, it was noted that such a condition would apply only to non-ICSID arbitrations and reference was made to the proposed text of article 31(4) in para. 15 of [A/CN.9/WG.III/WP.241](#).

119. It was clarified that article 23 concerned the recognition and enforcement of decisions by the Permanent Tribunal and did not address the remedies to the first-tier tribunal's decision.

120. The Working Group considered the advantages and disadvantages of allowing non-Contracting Parties to utilize the Appellate Tribunal, noting the implications, including their impact on incentives for States to join the Statute and the fees to be charged, which could be higher for non-Contracting Parties.

121. The secretariat was requested to prepare text to reflect that in cases of a perfect match of listed treaties, appeal would be the exclusive remedy for any decision/award rendered by a first-tier tribunal under such treaty, when such a decision/award fell within the scope of appeal. The secretariat was further requested to prepare text that when the Contracting Parties listed a treaty, the treaty would be modified so that the offer of arbitration in that treaty would be deemed to include a condition that the arbitration be seated in a Contracting Party of the Appellate Tribunal. The secretariat was requested to prepare text where disputing parties would be required to submit a waiver when an appeal is requested, to ensure the exclusivity of the appeal (or any agreement to exclusivity), particularly when the dispute involved a non-Contracting Party or its investor and in the context of contract-based disputes.

Recognition and enforcement of decisions of the Permanent Tribunal

122. It was generally felt that the Permanent Tribunal should have a self-contained enforcement mechanism similar to that in the ICSID Convention. To ensure alignment with article 54(1) of the ICSID Convention, it was suggested to insert the word "pecuniary" before "obligations" in the first sentence of article 23(1). It was explained that this would limit enforcement to decisions on "monetary compensation", while other non-pecuniary obligations would still bind the disputing parties.

123. With regard to article 23(3), different views were expressed on how to recognize and enforce decisions of the Permanent Tribunal in a non-Contracting Party and whether the New York Convention could be relied upon. It was noted that paragraph 3 had an important signalling effect without creating obligations for non-Contracting Parties. It was suggested that an additional paragraph could be included, which would deem consent and submission of a dispute to the Permanent Tribunal as agreement in writing to submit the dispute to arbitration so as to trigger article II(3) of the New York Convention (see para. 90 above). It was further suggested that the text of the Statute should be aligned more closely with the framework of arbitration to ensure that the outcomes of the Permanent Tribunal would be treated as arbitral awards.

124. Another view was that the reliance on the New York Convention would be inappropriate given the standing nature of the Permanent Tribunal. In that context, it was mentioned that the Permanent Tribunal could not be regarded as performing arbitral functions, in light of its institutional parameters, including its method of selecting the members of the Tribunal and financing structure, which substantially differed from arbitration. It was said that the statute of the Permanent Tribunal could not impose any obligations on non-Contracting Parties nor determine or affect how courts in such jurisdictions would treat decisions of the Permanent Tribunal. In that context, it was suggested that a large number of Contracting Parties would be required for the successful operation of the enforcement mechanism.

125. After discussion, it was agreed that paragraph 3 should be revised to avoid prescriptive language and instead highlight the understanding of the Contracting Parties (for example, by replacing the phrase "shall be treated" with "is considered").

126. With regard to paragraph 4, it was said that for States that did not wish to provide for appeal, it might be necessary to introduce review by courts during the enforcement stage. However, doubts were expressed about paragraph 4 as it introduced an

additional layer of review, which would be inconsistent with the notion that appeal was to be the exclusive recourse for decisions by the Permanent Tribunal. After discussion, it was agreed to delete paragraph 4.

127. It was suggested that text akin to article 55 of the ICSID Convention should be incorporated as an additional paragraph in article 23.

Interaction with other ISDS Reform elements

128. It was generally felt that the Advisory Centre could provide representation services before the Tribunals and that certain services to be provided by the Advisory Centre under article 6 of its Statute could be carried out in cooperation with the Tribunals as long as this did not have any impact on their independence and impartiality.

129. It was generally felt that the rules of procedure governing the Tribunals would be developed by the CoP or the respective Tribunals. It was noted that such rules could make reference to the provisions on procedural and cross-cutting issues expected to be adopted by the Commission. While a suggestion was made to develop rules to address any conflict between the rules of procedure and relevant provisions in the underlying treaty, it was stated that a general rule might be difficult to develop and that such conflict would need to be addressed on a case-by-case basis.

130. It was observed that the UNCITRAL Code of Conduct for Judges was expected to apply in the context of both Tribunals (article 12(4) in both statutes), which might be complemented by any regulations concerning the conduct and ethical obligations of the members of the Tribunals adopted by the CoPs.

VI. Way forward

131. It was agreed that the agenda of the Working Group for the following sessions would be as follows:

- The fifty-fifth session (12–16 October 2026, Vienna) would consider the remaining provisions of the procedural rules and cross-cutting issues, as well as the draft guidelines on the calculation of damages and compensation in ISDS;
- The fifty-sixth session (11–15 January 2027, Vienna) would consider the draft Statutes of the Permanent Tribunal and the Appellate Tribunal, including any updates and annotations thereto;
- The fifty-seventh session (1–5 March 2027, New York) would aim to finalize the texts to be presented to the Commission depending on the progress made.

132. It was noted that the dates of the Working Group session were subject to confirmation by the Commission at its fifty-ninth session.

133. It was suggested that the agenda of the tenth intersessional meeting (7–9 September 2026, Hanoi) could focus on the calculation of damages as well as certain aspects of the two Tribunals (scope and jurisdiction, recognition and enforcement, relationship between the Statutes and the MIIR). The secretariat was requested to update relevant parts of the Statutes for that meeting and to hold a side event during the fifty-fifth session of the Working Group to present the outcomes of the intersessional meeting.

134. In light of the linkage of the various reform elements with the MIIR, the secretariat was requested to make available an updated draft of the MIIR on an informal basis (in English), which could set forth the possible notification mechanisms as well as an outline of the different protocols. The secretariat was further requested to hold informal events on the possible inter se modification of the ICSID Convention with the ICSID Secretariat. Noting that the increased number of informal meetings should not be to the detriment of the inclusiveness of the process, it was reaffirmed that no decisions would be taken at such meetings.