Operationalization of the Advisory Centre on International Investment Dispute Resolution
Third meeting
Paris, 1-3 December 2025

Thresholds for entry into force of the Statute of the Advisory Centre

I. Introduction

1. This background document examines the thresholds for the entry into force of the Statute of the Advisory Centre. Article 13 of the Statute establishes two requirements: (a) a minimum number of Members, reflected in the instruments of ratification, acceptance, approval or accession and (b) the anticipated total amount of financial contributions by Members should exceed a certain amount. These thresholds aim to ensure that the Centre becomes operational only once there is both sufficient political commitment and adequate financial commitment to cover the notional anticipated budget of USD 4.5 million (A/CN.9/1218, para. 41).

2. Article 13 provides:

> ***Article 13 - Entry into force***
>
> *1. This Protocol shall enter into force six months following the date upon which the following conditions are met:*
>
> *(a) [Number to be determined, including the possibility of requiring a certain number from each group of Members] instruments of ratification, acceptance, approval or accession have been deposited; and*
>
> *(b) The total amount of contributions that States or regional economic integration organizations that are Parties to the Protocol are obliged to make in accordance with [Annex IV] exceeds [an amount to be determined].*
>
> *2. When a State or a regional economic integration organization ratifies, accepts, approves or accedes to this Protocol after its entry into force in accordance with paragraph 1, this Protocol enters into force in respect of that State or regional economic integration organization thirty (30) days after the date of deposit of its instrument of ratification, acceptance, approval or accession.*

II. Thresholds for the entry into force

Membership threshold - subparagraph (a)

3. The membership threshold is aimed at securing a minimum number of Members. Based on the experience of the Advisory Centre on WTO Law, preference was expressed for requiring at least twenty (20) instruments of ratification, acceptance, approval or accession (A/CN.9/1218, para. 42). The Meeting may wish to confirm that a total of twenty (20) treaty actions would indicate the level of commitment by States to initiate the operation of the Advisory Centre.

4. In addition, it was suggested that the membership should reflect a balance among beneficiaries (in particular LDCs) and donors by requiring a certain number

of instruments from each category of Members.[1] Balanced representation is particularly important, given the Centre's objective to support LDCs and developing countries, while also ensuring sufficient funding and, therefore, the participation of donors. This notion is currently reflected in the square-bracketed text in subparagraph (a) and is subject to consideration by the Commission.

5. The Meeting may wish to consider whether it would be necessary to set a minimum number of Members who would benefit from the services. As mentioned during the second AC-OP meeting, States that wish to benefit from the services of the Centre, may be hesitant to ratify or accede to the Statute if the services of the Centre are not immediately available or if their expected financial contribution is too high. Therefore, requiring a minimum number of beneficiaries for the entry into force of the Statute may unduly delay the establishment of the Centre, which would ultimately be at the detriment of the anticipated beneficiaries. In this regard, reference should be made to the possible classification of Members (including potential beneficiaries) in document AC/OP/BD.14.

6. Furthermore, under the proposed financing structure in document AC/OP/BD.15, the threshold in subparagraph (b) is unlikely to be met when there is an insufficient number of Members in Groups III in Model A and those in Groups IV and V in Models B and C. This is because their contributions are capped at a maximum of 7.5 % or 10%. Therefore, it may also be unnecessary to require a minimum number of so-called donors in subparagraph (a).

7. Introduction of a threshold based on the number of donors or beneficiaries may also pose practical challenges for the depositary as it would need to determine whether a State falls under such category, which may not necessarily be clear from the Statute itself.

Financial threshold - subparagraph (b)

8. The threshold in subparagraph (b) ensures the collective financial commitments necessary for the Centre to commence operations and ensure financial sustainability.

9. Subparagraph (b) had been drafted on the assumption that Annex IV of the Statute would indicate a fixed amount of minimum contributions by Members in each category, and that the total amount of those anticipated contributions by all Members should add up to an amount greater than the amount indicated in the subparagraph.

10. However, discussions on the financing structure of the Centre have evolved since the adoption of the Statue in principle. The approach currently outlined in AC/OP/BD.15, is based on three key assumptions: (i) the anticipated annual notional budget of the Advisory Centre would be USD 4.5 million; (ii) the membership contributions should cover the entirety of the Centre's budget; and (iii) the budget should be allocated among the Members based on the scale of assessment of the United Nations yet with a maximum cap.

11. Models A and B categorize UN Member States into groups and assign a fixed unit to States that fall within that group. The units also indicate the maximum percentage of the Advisory Centre budget that a Member is expected to contribute. Therefore, the total sum of the units should amount to at least 100 in both Models.

12. While Model C allocates the budget based on the respective UN assessment rates (and not by units), it puts a maximum cap on the contribution similar to that

[1] It was said that this would encourage donor States to consider becoming a Member as a means to support LDCs and developing countries, even if they might not have priority in access to the Centre's representation services.

in Model B. Therefore, the sum of the maximum caps of all Members should amount to at least 100 in Model C.

13. The threshold in subparagraph (b) would thus need to reflect the approach taken with regard to the financing structure of the Advisory Centre. The following outlines some possible scenarios where the threshold would be met under Model B (with five groups) as set out in AC/OP/BD.15.

Scenario X

Group	Members	Units/member	Total units	Member contribution	Group total
I	13	1	13	$ 44,776	$ 582,080
II	15	2.5	37.5	$ 111,940	$ 1,679,104
III	10	5	50	$ 223,880	$ 2,238,806
IV	0	7.5	-	-	-
V	0	10	-	-	-
Total	**38**		**100.5**		$ 4,500,000

14. Scenario X would be a situation where only beneficiaries (Members in Groups I to III) participate and meet the threshold of both subparagraphs.

Scenario Y

Group	Members	Units/member	Total units	Member contribution	Group total
I	4	1	4	$ 41,284	$ 165,137
II	3	2.5	7.5	$ 103,211	$ 309,633
III	6	5	30	$ 206,422	$ 1,238,532
IV	5	7.5	37.5	$ 309,633	$ 1,548,165
V	3	10	30	$ 412,844	$ 1,238,532
Total	**21**		**105**		$ 4,500,000

15. Scenario Y would be a situation where the membership is more balanced and where the thresholds in both subparagraphs are met. However, since the sum of the units is just above the threshold of 100, each Member would be expected to make almost the maximum contribution.

Scenario Z

Group		Members	Units/member	Total units	Member contribution	Group total
I		10	1	10	$ 30,000	$ 300,000
II		8	2.5	20	$ 75,000	$ 600,000
III		6	5	30	$ 150,000	$ 900,000
IV		8	7.5	60	$ 225,000	$ 1,800,000
V		3	10	30	$ 300,000	$ 900,000
Total		**35**	-	**150**	-	$ 4,500,000

16. Scenario Z illustrates a situation where the threshold has been met and additional Members join, thereby reducing the burden of each Member. Compared with scenario Y, the individual contribution by each Member is reduced.

Participation by REIOs

17. Article 4 of the Statute provides that a regional economic integration organization (REIO) may become a Member of the Advisory Centre in accordance

with article 12. Accordingly, an instrument of ratification, acceptance, approval, or accession by an REIO is understood to count for the purposes of determining whether the threshold is met in accordance with article 13(1). This is different from the approach taken in the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, which provides in article 8(2) that "When the number of Parties is relevant in this Convention, a regional economic integration organization does not count as a Party in addition to its member States which are Parties".

III. Role of the depositary and the interim secretariat to assess the thresholds

18. The Secretariat was requested to further examine whether the depositary of the Statute would be in a position to verify its entry into force under the two conditions set out in article 13, and to consider the possible role of an interim secretariat in that context (A/CN.9/1218, para. 44). Currently, both the depositary of the Statute (article 11) and the interim secretariat are yet to be determined. It is also questionable whether the interim secretariat should have any role in determining the entry into force of the Statute.

19. It is customary for the depositary to determine the entry into force of a convention or a treaty. Under the current dual threshold in the Statute, the depositary would be responsible for not only verifying the formal deposit of instruments of ratification, acceptance, approval, or accession, but also for determining the financial contributions to be made by the Parties based on their UN assessment rates or as fixed units or maximum caps. This may be challenging as the latter falls outside the traditional functions of the Secretary-General of the United Nations in its role as the depositary.

20. The Secretary-General serves as depositary for over 560 multilateral treaties, including major instruments such as the Rome Statute of the International Criminal Court (1998) and the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement, 2023). In these cases, the Secretary-General's functions have been limited to traditional depositary tasks, as codified in article 77 of the Vienna Convention on the Law of Treaties, such as receiving and verifying instruments of ratification, acceptance, approval, or accession; maintaining custody of originals; and notifying Parties of treaty actions.2 For example, both instruments require the depositary to monitor treaty actions: under the Rome Statute, the Secretary-General had to confirm when the sixtieth instrument of ratification was deposited for entry into force, while the BBNJ Agreement similarly tasks the Secretary-General with tracking deposited instruments and issuing notifications once the membership threshold is reached.3

21. However, these precedents underscore that the Secretary-General does not engage in verifying the anticipated financial obligations of Parties and whether they amount to a level which would ensure the sustainable operation of the Advisory Centre. Such tasks fall outside the ordinary scope of depositary functions and would introduce operational and legal complexities.

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[2] For an overview of the Secretary-General's depositary functions, see United Nations Treaty Handbook, available at: https://treaties.un.org/doc/source/publications/THB/English.pdf

[3] Article 126 of the Rome Statute of the International Criminal Court provides that the Statute *"shall enter into force on the first day of the month after the 60th day following the deposit of the sixtieth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations*." See Rome Statute of the ICC, UN Treaty Series, Vol. 2187, p. 3.

22. Therefore, if the threshold in subparagraph (b) is retained in the Statute, it would be necessary to identify a depositary which would undertake the role as set forth therein.

23. The interim secretariat may play a supporting role. For example, it could assist the depositary by monitoring and consolidating information on anticipated contribution by Members and by tracking pledges, to allow the depositary to determine whether the financial threshold has been met (see also AC/OP/BD.18). This arrangement would allow the depositary to rely on verified data provided by the interim secretariat, and it could preserve the integrity of the depositary's traditional role. However, the relationship between the depositary and the interim secretariat would need to be further clarified.

IV. Way forward

24. The Meeting should discuss and recommend the threshold to determine the entry into force of the Statute in article 13, including whether it should introduce thresholds in addition to the number of instruments, and if so, what such threshold should be. In conjunction, the Meeting may wish to suggest the depositary of the Statute, which would determine the entry into force of the Statute.