

**Operationalization of the Advisory Centre on
International Investment Dispute Resolution**

**Establishing the Advisory Centre within the United Nations
system as a related organization or a specialized agency**

I. Introduction

1. At the first AC-OP meeting, it was generally viewed that in line with its Statutes, the Advisory Centre should be established as an independent and autonomous organization and that a relationship should be sought with the United Nations. In that connection, it was felt that the Advisory Centre should be established as a related organization or a specialized agency of the United Nations instead of a General Assembly and ECOSOC Fund, Programme, and Entity or a research and training institute ([A/CN.9/WG.III/WP.251](#), para. 9).¹
2. Document [AC/OP/BD.2](#) prepared for the first AC-OP meeting presented possible ways to establish the Advisory Centre within the United Nations system, including as a related organization or a specialized agency (see paras. 33-47 and 56-68). This document complements the information therein and focuses on the two approaches in relation to: (i) funding and contributions; (ii) privileges and immunities; (iii) the administrative framework including the United Nations common system and the United Nations Joint Pension Fund (UNJSPF), and (iv) the interim secretariat (see also [A/CN.9/WG.III/WP.251](#), para. 10-13).
3. The following lists the relevant provisions in the Statute.

Article 8 - Financing

1. *The operation of the Advisory Centre shall be funded by the contributions of Members, the fees for services provided by the Advisory Centre and voluntary contributions.*
2. *Each Member shall make financial contributions in accordance with [annex IV]. ...*
3. *The Advisory Centre shall charge fees for its services in accordance with the regulations adopted by the Governing Committee:*
 - (a) ...;
 - (b)
4. *The Advisory Centre may receive voluntary contributions, whether monetary or in kind, from Members, non-Members, international and regional organizations and other persons or entities in accordance with the regulations adopted by the Governing Committee, provided that the receipt of such contributions is consistent with the objectives of the Advisory Centre, is reported in the annual report and does not create any*

¹ See also [A/CN.9/1196](#), para. 21.

conflict of interest or otherwise impede the independent operation of the Advisory Centre.

5. *The Advisory Centre may set up trust funds for the purposes of receiving and managing the financial contributions and the fees referred to in paragraphs 1 to 4.*

6. *The budget and expenditure of the Advisory Centre shall be subject to internal and external audit.*

Article 9 - Legal status and liability

1. *The Advisory Centre shall have full international legal personality. The legal capacity of the Advisory Centre shall include the capacity to contract, to acquire and dispose of immovable and movable property and to institute legal proceedings.*

2. *The Advisory Centre shall be headquartered in [to be determined]. The Advisory Centre shall conclude a host country agreement with [host State/Government to be determined].*

3. *...*

4. *To fulfil its objectives, the Advisory Centre shall enjoy in the territories of each Member the privileges and immunities as set out in this Protocol.*

5. *The archives of the Advisory Centre shall be inviolable, wherever they may be.*

6. *The Advisory Centre, its property and assets shall enjoy, at a minimum, such immunity as necessary for the fulfilment of its objectives and for the exercise of its functions, except when the Advisory Centre waives this immunity.*

7. *The Advisory Centre, its property, assets and income, and its operations and transactions authorized by this Protocol shall be exempt from direct taxation and all customs duties. The Advisory Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.*

8. *The Executive Director and staff members of the Secretariat shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Advisory Centre waives this immunity.*

9. *No tax shall be levied on or in respect of salaries, expense allowances or other emoluments paid by the Advisory Centre to the Executive Director and the staff members of the Secretariat.*

II. Issues for consideration

4. "Related organization" refers to an independent and autonomous organization that has entered into a relationship agreement with the United Nations in respect of a number of issues (such as coordination of activities, reciprocal representation, reporting mechanism, cooperation between the secretariats, and personnel arrangements including the use of United Nations

laissez-passer, and the application of the rules and regulations of the United Nations).

5. “Specialized agency” refers to an autonomous organization that operate in coordination with the United Nations Economic and Social Council (ECOSOC) pursuant to articles 57 and 63 of United Nations Charter.

1. Financing of the Advisory Centre

6. When adopting the Statute in principle, the Commission agreed that it would consider ways to establish the Advisory Centre within the United Nations system “based entirely on extrabudgetary resources” as part of the operationalization process (A/79/17, para. 158). This would mean that there would be no implication on the regular budget of the United Nations. This formed the basis of the discussions at the first AC-OP meeting.

Specialized agencies

7. A survey of 15 entities established as specialized agencies shows that none of them was funded by UN regular budget, either wholly or partially.² The financing of a specialized agency is typically ensured through the financial commitment and contribution of its members, either on a fixed mandatory (assessed) or voluntary basis.³ This is generally in line with article 8 of the Statute, apart from the fact that the Statute foresees that fees for services would constitute an additional source of financing. In determining the assessed contributions of members, a number of the specialized agencies use the UN scale of assessment adjusted to the differences in membership.⁴

8. In a specialized agency, the nature and modes of financial contributions can affect the voting rights of its members. While most of the specialized agencies adopt an equal vote rule (“one member, one vote”), some agencies link voting rights to financial contributions. IFAD, for example, has a mixed system of (i) membership votes distributed equally among the Member States and (ii) contribution votes distributed in accordance with the States’ respective share in paid contributions to a given replenishment.⁵ At ITU, Member States decide their contributory class, which determines the number of votes they receive.⁶ A similar system applies to IMF and IBRD, where voting rights are based on financial contributions.

Related organizations

9. Related organizations take a similar approach with regard to financing. Eight of the nine related organizations surveyed do not benefit from the UN regular budget funding. The only exception maybe the UNFCCC, for which regular budget of the United Nations is used to provide conference services for meetings of Convention and Protocol bodies through UNOG, in

² The survey covers the following entities: Agriculture Organization (FAO), International Civil Aviation Organization (ICAO), International Fund for Agricultural Development (IFAD), International Labour Organization (ILO), International Monetary Fund (IMF), International Maritime Organization (IMO), International Telecommunication Union (ITU), UN Educational, Scientific and Cultural Organization (UNESCO), UN Industrial Development Organization (UNIDO), World Tourism Organization (UNWTO), Universal Postal Union (UPU), World Health Organization (WHO), World Intellectual Property Organization (WIPO), World Meteorological Organization (WMO), and World Bank Group.

³ IFAD operates entirely on voluntary contributions.

⁴ See, for instance, UNIDO Financial Regulations 5(2) and UNWTO Financial Regulation 6(2).

⁵ See Article 6, Section 3 of the Agreement Establishing IFAD.

⁶ General Rules of Conferences, Assemblies, and Meetings of the Union, Specific rules of procedure for the election of the Member States of the Council.

accordance with resolutions adopted by the General Assembly. Related organizations also use the UN scale of assessment (as adjusted) for the purpose of determining their members' assessed contributions.⁷

2. Privileges and immunities

10. Article 9(4) to (9) grants privileges and immunity to the Advisory Centre and its staff members, while article 9(2) foresees that the Advisory Centre shall conclude a host country agreement with the host State which can further detail such privileges and immunities in the host State.

11. The Convention on the Privileges and Immunities of the United Nations (1946) and the Convention on the Privileges and Immunities of the Specialized Agencies (1947) establish the legal immunities, exemptions, and facilities necessary for the United Nations, its affiliated entities, and the specialized agencies to function independently and efficiently across their Contracting States.

12. The 1946 Convention grants privileges and immunities, which includes immunity from legal processes, tax exemptions, and inviolability of premises, documents, and communications (see article II, sections 2, 3 and 7 and article III, section 9). The 1947 Convention applies to specialized agencies, providing them with the legal protections necessary to carry out their mandates without interference. The two Conventions protect United Nations personnel, representatives, and assets to facilitate international cooperation and safeguard the impartiality and operational freedom essential to their missions.

13. Considering that the activities of the Advisory Centre were likely to take place outside the headquarters (including in the territory of non-Member States), the possible application of the above-mentioned Conventions was sought ([A/CN.9/WG.III/WP.251](#), para. 11), which would be in addition to the host country agreement envisaged under article 9(2) of the Statute.

14. If established as a specialized agency, the 1947 Convention would apply to the Advisory Centre and its staff members, which would also be binding on the Members that are parties to the 1947 Convention.⁸

15. If established as a related organization, it may be possible to have the 1946 Convention apply to the Advisory Centre and its staff members by including a reference in the Statute that Members grant privileges and immunities under the 1946 Convention, in addition to those already provided for in article 9. Such a reference may also be included in the host country agreement. While this would capture the Members' agreement to grant privilege and immunities under the 1946 Convention, it would not necessarily cover non-Member States. To address that situation, it may be necessary for the Advisory Centre to enter into bilateral agreements with those non-Member States.

⁷ See, for instance, CTBTO (<https://www.ctbto.org/our-mission/the-organization/the-preparatory-commission#:~:text=Assessed%20Contributions&text=The%20adjusted%20scale%20is%20then,until%20such%20payment%20is%20made>); OPCW Financial Regulations Article 5; IOM Standing Committee on Programmes and Finance, 'Proposed Adjustment to the IOM Assessment Scale for 2024' available at <https://governingbodies.iom.int/system/files/en/scpf/32nd/s-32-3-assessment-scale-for-2024.pdf>.

⁸ A list of States that are parties to the 1947 Convention is available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-2&chapter=3&clang=_en.

3. The administrative framework of the United Nations including the United Nations common system and the UNJSPF

16. At the first AC-OP meeting, there was general support that the administrative framework of the United Nations should form the basis of the Advisory Centre's operations, as it could improve the efficiency in delivering the core services.⁹ This included staff rules and regulations as well as financial rules and regulations, which could be applied directly or used as a benchmark. This could be the approach taken to the extent that such rules and regulations align with the operational needs of the Advisory Centre.

17. There was also general support that the Advisory Centre should aim to become part of the United Nations common system overseen by the International Civil Service Commission (ICSC).¹⁰ To become part of the United Nations common system, the Advisory Centre would need to accept the ICSC statute regardless of whether it is established as a related organization or a specialized agency. The ICSC statute identifies three broad categories of members: (i) the United Nations, (ii) specialized agencies of the United Nations, and (iii) other international organizations which participate in the United Nations common system.¹¹ Acceptance of the ICSC statute is to be notified to the Secretary General by its executive head.¹²

18. At that meeting, preference was also expressed for the Advisory Centre to seek participation in the UNJSPF.¹³ Membership in the UNJSPF is open to specialized agencies and to any other international or intergovernmental organization which participates in the UN common system. Accession to the Fund is made upon recommendation by the Pension Board and after decision by the General Assembly. A majority of specialized agencies and related organizations are part of the UNJSPF.¹⁴

4. Interim secretariat

19. At the first AC-OP meeting, it was noted that there could be benefit in the United Nations Secretariat (including possibly the UNCITRAL secretariat) functioning as the interim secretariat of the Advisory Centre until the Statute entered into force and its secretariat was set up.¹⁵

20. It was also suggested that the interim functions should be carried out through extrabudgetary resources (e.g. voluntary contributions), so that there would not be any implications for the regular budget of the United Nations.

21. The functions to be carried out by the interim secretariat would be to collect voluntary contributions from States, international organizations,

⁹ See [A/CN.9/WG.III/WP.251](#), para. 12.

¹⁰ Ibid. The United Nations common system refers to common standards, methods and arrangements being applied to salaries, allowances and benefits for the staff of the United Nations system. It is currently comprised of the United Nations, its funds and programmes, 13 specialized agencies, and one related organization – the International Atomic Energy Agency (IAEA). The full list is available at <https://icsc.un.org/Home/CommonSystem>. IAEA has a special status under the ICSC statute.

¹¹ See ICSC Statute, article 1(2): "The Commission shall perform its functions in respect of the United Nations and of those specialized agencies and other international organizations which participate in the United Nations common system, and which accept the present statute (hereinafter referred to as the organizations)."

¹² Ibid, article 1(3).

¹³ See [A/CN.9/WG.III/WP.251](#), para. 12.

¹⁴ Among related organizations, the UNFCCC is not part of the UNJSPF; among specialized agencies, agencies from the World Bank Group and the IMF are also not part of the UNJSPF.

¹⁵ See [A/CN.9/WG.III/WP.251](#), para. 13.

REIOs and other entities (including private entities) and to manage the trust fund, which could facilitate the entry into force of the Statute and the initial operation of the Advisory Centre. It may also prepare the draft relationship agreement with the United Nations.

22. There have been precedents. For example, the United Nations Framework Convention on Climate Change (UNFCCC) Secretariat was initially supported by the United Nations Secretariat before becoming fully independent. The United Nations Secretariat also played a crucial role in facilitating and coordinating the establishment and operation of the ITLOS and the ICC, while both were set up as related organizations.

III. Way forward

23. In light of the above, the AC-OP meeting may wish to consider whether the following recommendations should be made to the Commission:

- To seek the establishment of the Advisory Centre first as a related organization of the United Nations by foreseeing the conclusion of a relationship agreement and as a second step, to see if it could qualify as a specialized agency;
- To suggest that the terms of the relationship agreement are prepared;
- To suggest that the Statute makes explicit reference to the 1946 Convention;
- To seek the establishment of the Advisory Centre without any implication on the budget of the United Nations;
- To suggest that the administrative framework of the United Nations (including the relevant rules and regulations) should form the basis of the Advisory Centre's operations as long as they aligned with the operational needs of the Advisory Centre;
- To suggest that the Advisory Centre aims to become part of the United Nations common system and to participation in the UNJSPF; and
- To suggest that the United Nations secretariat performs the functions of the interim secretariat without any implication on the regular budget of the United Nations.