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Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its forty-eighth session (New York, 1–5 April 2024)

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I. Introduction

1. At its fiftieth session in 2017, the Commission entrusted the Working Group with a broad mandate to work on the possible reform of investor-State dispute settlement (ISDS). 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.[1] From its thirty-eighth to forty-seventh session, the Working Group considered concrete solutions for ISDS reform.[2]

2. At its forty-seventh session in January 2024, the Working Group considered the draft statute of an advisory centre based on document A/CN.9/WG.III/WP.236 and requested the Secretariat to revise the draft statute based on its deliberations and decisions.[3] The Working Group also discussed how to advance its work on the draft provisions on procedural and cross-cutting issues contained in documents A/CN.9/WG.III/WP.231 and A/CN.9/WG.III/WP.232.[4] The Working Group also instructed the Secretariat to update the draft guidelines on prevention and mitigation of international investment disputes in document A/CN.9/WG.III/WP.235 based on comments and inputs and to present it as an informal document at the current session.[5]

II. Organization of the session

3. The Working Group, which was composed of all States members of the Commission, held its forty-eighth session from 1 to 5 April 2024 at the United Nations Headquarters in New York.

4. The session was attended by the following States members of the Working Group: Algeria, Argentina, Armenia, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Côte d'Ivoire, Croatia, Czechia, Democratic Republic of the Congo, Dominican Republic, Ecuador, Finland, France, Germany, Ghana, Greece, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kenya, Kuwait, Malawi, Malaysia, Mexico, Morocco, Panama, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, Somalia, South Africa, Spain, Switzerland, Thailand, Türkiye, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of) and Viet Nam.

5. The session was attended by observers from the following States: Bahrain, Costa Rica, El Salvador, Equatorial Guinea, Jamaica, Lebanon, Lesotho, Madagascar, Myanmar, Netherlands (Kingdom of the), Niger, Paraguay, Philippines, Romania, San Marino, Sierra Leone, Slovakia, Slovenia, Sri Lanka, Sweden and Tunisia.

6. The session was attended by observers from the European Union.

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

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

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[1] 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.

[2] The deliberations and decisions of the Working Group at its thirty-eighth to forty-seventh 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 and A/CN.9/1161.

[3] A/CN.9/1161, paras. 15–111.

[4] Ibid., paras. 113–116.

[5] A/CN.9/1161, para. 112.

(b) *Intergovernmental organizations*: African Union (AU), Commonwealth Secretariat, Permanent Court of Arbitration (PCA) and South Centre;

(c) *Invited non-governmental organizations*: Academic Forum, ACP Legal, American Bar Association (ABA), American Society of International Law (ASIL), Asian Academy of International Law (AAIL), Belgian Centre for Arbitration and Mediation (CEPANI), Centre of Excellence for International Courts (iCourts), Centre for International Law, National University of Singapore (CIL), Centre for International Legal Studies (CILS), Centro de Estudios de Derecho, Economia y Politica (CEDEP), Chartered Institute of Arbitrators (CIArb), China Council for the Promotion of International Trade (CCPIT), China Society of Private International Law (CSPIL), Climate Change Counsel, Columbia Centre on Sustainable Investment (CCSI), Comité Français de l'Arbitrage (CFA), Compliance Politics and International Investment Disputes (COPIID), Corporate Counsel International Arbitration Group (CCIAG), European Chinese Arbitrators Association (ECAA), European Federation for Investment Law And Arbitration (EFILA), Forum for International Conciliation and Arbitration (FICA), International and Comparative Law Research Center (ICLRC), Institutio Ecuatoriano de Arbitraje (IEA), Inter-American Bar Association (IABA), International Chamber of Commerce (ICC), International Institute for Environment and Development (IIED), International Law Institute (ILI), New York City Bar Association (NYCBAR), New York International Arbitration Center (NYIAC), New York State Bar Association (NYSBA), School of International Studies at the University of Trento (SIS), Singapore International Arbitration Centre (SIAC) and United States Council for International Business (USCIB).

8. The Working Group elected the following officers:

Chairperson: Mr. Shane Spelliscy (Canada)

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

9. The Working Group had before it the following official documents: annotated provisional agenda (A/CN.9/WG.III/WP.237), draft statute of an advisory centre on international investment dispute resolution (A/CN.9/WG.III/WP.238), draft statute of a standing mechanism for the resolution of international investment disputes (A/CN.9/WG.III/WP.239) and annotations thereto (A/CN.9/WG.III/WP.240), and a submission from the Government of Switzerland with regard to the draft statute of a standing mechanism (A/CN.9/WG.III/WP.241). In addition, the Working Group had before it the following informal documents: (i) budget and financing of an advisory centre;[6] and (ii) revised draft guidelines on prevention and mitigation of international investment disputes.[7] Furthermore, the Working Group had before it an advance copy of the summary of the seventh intersessional meeting on ISDS reform submitted by the Government of Belgium (A/CN.9/WG.III/WP.242).

10. 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.
6. Adoption of the report.

11. As to the scheduling of the session, it was agreed that the discussions during the first three days would begin with the draft statute of an advisory centre, which would be followed by the discussions on the revised draft guidelines on prevention and

[6] Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/EN/budget_and_financing_of_an_ac_rev.pdf.

[7] Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/wp.235_rev_clean.pdf.

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mitigation of international investment disputes. It was further agreed that discussion on the draft statute of a standing mechanism would follow.

12. The Working Group expressed its appreciation for the contributions to the UNCITRAL trust fund from the European Union, the Government of France, and the Swiss Agency for Development and Cooperation (SDC) aimed at allowing the participation of representatives of developing States in the deliberations of the Working Group as well as securing translations for informal sessions, so as to ensure that the process would remain inclusive and fully transparent.

III. Draft statute of an advisory centre on international investment dispute resolution (A/CN.9/WG.III/WP.238)

13. The Working Group recalled that at its forty-seventh session (22–26 January 2024, Vienna), it had completed its second reading of articles 1 to 8 of the draft statute of an advisory centre on international investment dispute resolution (the "Advisory Centre") as contained in document A/CN.9/WG.III/WP.236. At the current session, the Working Group continued its reading of the draft statute as contained in document A/CN.9/WG.III/WP.238.

A. Articles 1 to 8 – remaining issues

Article 4(3) and nomenclature in the Annexes

14. In response to concerns expressed about the nomenclature to refer to the different categories of States in Annexes I to III, it was suggested that the draft statute, including the annexes, should not include any nomenclature. It was said that article 2(2) could continue to refer to the terms "least developed countries" and "developing countries", as that paragraph set forth the key objectives.

15. After discussion, the Working Group agreed to revise article 4(3) as follows: "For the purposes of this Protocol, each Member shall be categorized into Annex I, Annex II or Annex III. This categorization is without prejudice to classifications in other instruments or other organizations." The Working Group further agreed that the Annexes would not include any nomenclature and that the list of States in the respective Annexes would be considered later (see paras. 68–71 below).

Article 5 – Structure

16. With regard to article 5(7), the Working Group agreed to include the phrase ", including in particular" before the words "in international investment dispute resolution" to highlight the importance of such qualification with respect to the expertise needed to serve on the Executive Committee and allow other qualifications to be taken into account, as the Executive Committee was expected to address a wide range of issues relating to the operation of the Centre.

17. With regard to article 5(8), the Working Group agreed to replace the word "report" with "be accountable to" to align it with article 5(10).

18. It was generally felt that article 5 should include rules on decision-making by the Executive Committee and that paragraphs 5 and 6 containing the rules on decision-making by the Governing Committee should apply mutatis mutandis to the Executive Committee. It was agreed that paragraphs 5 and 6 could be placed after paragraph 8 to read along the following lines:

> "*. The Governing Committee and the Executive Committee shall endeavour to make all decisions by consensus.
>
> **. If a decision cannot be made by consensus in the Governing Committee, the subject matter may be submitted to a vote, which requires the presence of a majority of the Members. Each Member shall have one vote. Decisions shall

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require a four-fifths majority of the Members present and voting. If the majority of the Members are not present, the same subject matter may be submitted for a second vote at the next meeting of the Governing Committee, the decision of which may be made by a four-fifths majority of the Members present and voting.

**. If a decision cannot be made by consensus in the Executive Committee, the subject matter may be submitted to a vote which requires the presence of a majority of the members. Each member of the Executive Committee shall have one vote and the Executive Director, serving *ex officio*, shall not have a vote. Decisions shall require a four-fifths majority of the members present and voting. If the majority of the members are not present, the same subject matter may be submitted for a second vote at the next meeting of the Executive Committee, the decision of which may be made by a four-fifths majority of the members present and voting."

19. With respect to the above-mentioned rules, it was clarified that the quorum required for the "first vote" would not apply to the "second vote".

20. It was questioned whether a regional economic integration organization (REIO) would be a Member of the Advisory Centre with its own voting rights or voting on behalf of its member States and whether a REIO Member should be denied voting rights if any of its member States exercised its voting rights and vice versa, the wording of which was often found in treaties concluded under the auspices of the United Nations. References were made to article 64(2) of 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[8] and article 28(2) of the Minamata Convention on Mercury.[9] It was also questioned whether an REIO voting on behalf of its member States would do so only on behalf of the number of its member States present and voting.

21. It was recalled that the issue had been discussed and clarified (A/CN.9/1161, paras. 29 and 59) – that a REIO could be a Member of the Advisory Centre with its own rights and obligations, including the right to vote and the obligation to pay contributions foreseen in Annex IV. It was further clarified that member States of a REIO could not vote or benefit from the services of the Centre unless they were Members themselves, and vice versa. It was said that the issue of REIO membership in its own right and associated voting rules would need to be considered as part of the development of the multilateral instrument on ISDS reform (MIIR) and would require further consideration when the draft statute was finalized.

22. To enhance the readability of article 5, the Working Group agreed to include the following subheadings as appropriate: "Governing Committee"; "Executive Committee"; "Decision-making" and "Executive Director".

State-to-State dispute settlement (SSDS)

23. On whether express reference should be made in the draft statute with regard to services pertaining to SSDS, differing views were reiterated (see A/CN.9/1161, para. 73). In light of the divergence in views and noting that article 5(3)(i) allowed the Governing Committee to adjust the scope and type of services of the Centre, the Working Group agreed to not include an explicit reference to SSDS and leave it to the Governing Committee to determine whether SSDS-related services could be provided.

24. With respect to concerns expressed that the definition of "international investment dispute" contained in article 1(a) of the UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution (the "Code") could limit the scope of services of the Advisory Centre (in particular, with regard to SSDS), it

[8] Text available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-10&chapter=21&clang=_en.

[9] Text available at https://minamataconvention.org/sites/default/files/documents/information_document/Minamata-Convention-booklet-Oct2023-EN.pdf.

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was clarified that that definition was developed for the purposes of the Code only and that definitions developed for the purposes of a specific ISDS reform element should not automatically be imported when developing another reform element. It was agreed that the meaning "international investment dispute resolution" in the statute for the Centre should not be limited by the definition of that term or any other term in other instruments, including the Code. It was suggested that this could be clarified in the MIIR.

Article 8(3) – Fee structure

25. Regarding the fees for services rendered by the Centre, it was generally felt that the fee structure need not necessarily be set forth in an annex to the draft statute and that flexibility should be given to the Governing Committee to adjust the fees and to determine their method of calculation (for example, at an hourly rate or a fixed rate). It was suggested that article 8(3) should provide guidance to the Governing Committee on how to prepare the regulations, including how the fee structure would differ for the services rendered under article 6 and those rendered under article 7. With regard to the latter, it was suggested that the fees to be charged should aim to recover costs with discounted rates for Members in Annexes I and II. The need to ensure clarity and predictability of the fees was emphasized.

26. After discussion, the Working Group agreed to not include Annex V in the draft statute and to revise article 8(3) as follows:

> "3. The Advisory Centre shall charge fees for its services in accordance with the regulations adopted by the Governing Committee.
>
> (a) Services in article 6, paragraph 1, shall be provided at no cost to the Members. The fees to be charged to non-Members, other persons and entities shall be determined by the Executive Director in accordance with the regulations adopted by the Governing Committee.
>
> (b) The fees to be charged by the Advisory Centre for services in article 7, paragraph 1, shall not exceed the amount necessary to recover its costs. The fees to be charged to Members in Annex I shall be lower than those charged to Members in Annex II, which shall be lower than those charged to Members in Annex III. The fees to be charged to non-Members shall be equal to or higher than those charged to Members in Annex III, unless determined otherwise by the Governing Committee."

B. Legal status and liability (article 9)

Establishment within the United Nations system

27. The Working Group considered whether the Advisory Centre should be established within the United Nations system. Some advantages as well as disadvantages of possible models were mentioned. It was also explained that there could be various ways to establish the Centre within the United Nations system, which would need to be further examined as an operationalization issue.

28. After discussion, it was agreed that there would be merit in establishing the Centre within the United Nations system. To facilitate the consideration by the Commission of the various options, the Secretariat was requested to provide additional information, including the relationship that the Centre could have with the United Nations (for example, whether and how it would report to the United Nations, the terms of any possible relationship agreement and any complexities that it might raise). In addition, it was agreed that the establishment and operation of the Centre should not have any implication on the regular budget of the United Nations and vice versa.

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Paragraph 1

29. With regard to paragraph 1, it was agreed that the Centre should have full "international" legal personality, which should include legal capacity as listed in the second sentence, akin to article 18 of the ICSID Convention.

Paragraph 2

30. The possibility of establishing regional presences of the Advisory Centre was discussed. It was said that regional presence could enhance the accessibility of services to beneficiaries and the inclusivity of the Centre's activities. At the same time, it was said that various factors, such as costs, would need to be taken into account by the Governing Committee if and when it eventually decided to establish such presence. It was agreed that article 9(2) would include language to allow the Centre to establish regional offices, leaving room for the Governing Committee to determine the feasibility. In that respect, it was confirmed that such language (see para. 37 below) would not exclude the possibility of establishing regional offices from the start of the operation of the Centre.

31. While it was widely felt that the Centre should have headquarters in one location, diverging views were expressed on whether that location should be set forth in the draft statute or should be determined by the Governing Committee.

32. One view was that setting forth the location in the draft statute would befit the importance of the decision, which merited being taken by UNCITRAL rather than the initial Members of the Centre. It was said that inclusion of the location in the statute would provide for clarity and allow the host country to prepare for the establishment of the Centre before the statute entered into force. It was also said that the location of the headquarters would have an impact on the budget, which would determine the contributions expected of Members, and that leaving the decision to the Governing Committee might delay its establishment and operation.

33. Another view was that the Members of the Centre should make that decision and that flexibility should be provided to the Governing Committee to consider all relevant aspects in making that determination. It was further said that such an approach would make it possible to change the location of the headquarters, if required, without necessarily going through the amendment process.

34. It was generally felt that the location of the headquarters required further consideration, including the criteria to guide that determination.

35. A suggestion was made that the following sentence be added to article 9(2): "The Governing Committee may decide to change the headquarters in the event of significant developments impacting the effectiveness or suitability of the headquarters." In response, it was suggested that the word "change" be replaced with the word "move", the phrase "significant developments impacting the effectiveness or suitability" be replaced with "exceptional circumstances impacting the ability of the headquarters to operate", and clarify that the new sentence would apply notwithstanding article 15 on amendments.

36. It was suggested that a decision by the Governing Committee to relocate the headquarters should be based on unanimity or consensus. It was further suggested that such a decision should be made public and result in article 9(2) being amended. On the other hand, it was questioned whether the change in the location would need to be reflected as an amendment to the statute. It was also suggested that the phrase "exceptional circumstances" would need further elaboration.

37. After discussion, the Working Group agreed that article 9(2) should be revised as follows:

> "2.1 The Advisory Centre shall be headquartered in […] based on a host country agreement with […]. The Governing Committee may decide to relocate the headquarters, either temporarily or permanently, in the event that exceptional

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circumstances so significantly impact the operational effectiveness of the headquarters that the existing location is no longer suitable.

2.2 The Governing Committee may decide to establish regional offices of the Advisory Centre."

38. It was noted that the revision highlighted that a decision to relocate the headquarters should be taken in very limited instances (such as civil war or natural disaster where repair is not possible in the foreseeable future), and that such a decision should be taken by consensus (without any formal objection) to the extent possible, with article 5(6) providing the fallback rule. It was noted that a permanent relocation would require the statute to be updated and the Governing Committee should determine how to do so, including by a formal amendment of the statute.

Paragraphs 4 and 5

39. It was observed that the privileges and immunities of the Centre as set forth in article 9 would largely depend on whether and how it was established within the United Nations system. However, in order to provide default rules, it was agreed that article 9(4) should be revised as follows:

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

40. In the same vein, it was agreed that article 9(5) should provide exemption from "direct" taxes levied on the Centre by its Members rather than an exemption on all taxation. It was, however, acknowledged that the host country of the Centre or its regional offices could provide additional privileges and immunities and tax exemptions, which could be detailed in the respective host country agreement.

41. It was noted that the privileges and immunities of the Centre generally could not be established in non-member States. Accordingly, it was suggested that the Governing Committee should consider, when developing the regulations setting forth the terms and conditions of the Centre, that non-Members be required to provide the Centre with privileges and immunities similar to that found in article 9, or otherwise waive rights against the Centre that would be the subject of such immunity. The regulations should also require other parties or entities to waive immunity when dealing with the Centre. It was said that this would be a condition that the beneficiary would have to accept to receive the services and could avoid the need to conclude agreements each time services are provided to such beneficiaries.

Paragraph 6

42. A question was raised whether the Executive Director and the staff members of the Secretariat should enjoy functional immunity outside the host country. It was explained that there might be a need to provide such immunity for services rendered particularly under article 7, as it was expected that staff members would likely provide the services outside the host country and within the territory of the benefitting Member. Concerns were expressed regarding the difficulty that some States might have in providing such immunity, particularly to their own nationals, and the possible inequality of treatment of counsels that could result therefrom. It was also said that separate agreements could be concluded for specific services, including missions to the Member. Nevertheless, the Working Group agreed to retain paragraph 6. It was emphasized that providing for such functional immunity would avoid the Centre having to secure professional liability policies for its staff members. It was further suggested that the Governing Committee should establish rules to ensure accountability of its staff members and to address any cases of misconduct.

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Hosting of the Advisory Centre

43. The Government of Armenia expressed their interest in hosting the headquarters of the Centre or regional offices thereof (see A/CN.9/1161, para. 110).

C. Final clauses (articles 10 to 13)

Article 10 – Reservations

44. There was general support for retaining article 10 unchanged on the basis that it would not be necessary or desirable to allow Members to make any reservation under the draft statute. However, a number of suggestions were made. One suggestion was to delete article 10 so as to provide flexibility to States to make any reservation or declaration. In support, it was stated that this could facilitate accession by more States and could allow a State, for example, to exclude the possibility that another Member would obtain the support of the Advisory Centre in a proceeding against that State. However, doubts were expressed as it would then be left entirely to States to make any type of reservation, including on its obligations.

45. Another suggestion was that the reservation or declaration allowed under the draft statute could be specific to SSDS, allowing a State to declare that the Centre would not provide services under the draft statute (in particular, under article 7) to another Member in a proceeding where the State was a party. Questions were raised on the possible effect of any such declaration, particularly its impact on another Member's access to services and how it could be binding on the Centre. It was said that including language to allow for such a declaration would presume that the Centre would provide SSDS-related services, the decision on which had been deferred to the Governing Committee (see para. 23 above). It was said that in order to reflect the compromise with regard to SSDS, the reservation or declaration to be allowed would have to be in neutral terms, for example, allowing States to opt-in or opt-out or to choose the services it agreed to.

46. In the spirit of compromise, a suggestion was made that the services under article 7 could be limited to instances where the Member was a respondent.

47. In light of the compromise reached by the Working Group with regard to SSDS (see para. 23 above), it was widely felt that article 10 should remain unchanged. It was, however, suggested that the Governing Committee, if it made a decision to provide SSDS-related services, should consult the Members, seek means to address conflicts that could arise, and introduce conditions for providing SSDS-related services.

Article 11 – Depositary

48. The Working Group approved article 11 unchanged, subject to the determination of the depositary at a later stage.

Article 12 – Signature, ratification, acceptance, approval, accession

49. With regard to paragraph 1, it was suggested that a definition of REIO should be included in the draft statute and that a rule should be included in the draft statute (that when the number of Members is relevant, a REIO would not count as a Party in addition to its member States which are Members), similar to what is found in other treaties (for example, article 12 of the United Nations Convention on International Settlement Agreements Resulting from Mediation). Those suggestions did not receive support in view of the Working Group's discussion (see para. 21 above), and from the perspective of REIOs becoming Members to contribute to the operation of the Centre. It was suggested that the participation of REIOs could be further discussed in the context of the MIIR with regard to other reforms being developed.

50. While noting that the Working Group had yet to consider the structure and contents of the MIIR, it was generally felt that the draft statute should form a protocol

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to the MIIR. It was said that flexibility could be provided to a State or REIO to become a Member of the Advisory Centre without it being required to become a party to the MIIR. It was also observed that while it would be preferable to conclude the MIIR and the draft statute as its protocol at the same time, it should be possible for the statute to open for signature and possibly enter into force prior to the conclusion of the MIIR, with the possibility that the draft statute be incorporated into the MIIR at a later stage. However, given the likely complexity of drafting such provisions in the draft statute, it was said that the provision need not be drafted until necessary.

Article 13 – Entry into force

51. As to when the Protocol should enter into force when the conditions in article 13 were met, it was generally felt that six months would be appropriate. However, it was stated that the period could be shorter for a State or REIO that deposited its instrument after the entry into force of the Protocol (for example, 30 days).

52. Views diverged on whether subparagraph (a) should be one of the additional conditions to be met for the Protocol to enter into force. Considering that subparagraph (a) aimed to guarantee the financial sustainability of the Centre, it was felt that subparagraph (b) might suffice. On the other hand, it was argued that there should be at least a certain number of Members that would benefit from the priority rule provided in article 7 and a certain number of Annex III Members that would function as donors to the Centre. Therefore, it was suggested that the chapeau could foresee a minimum number of Members in each Annexes for the Protocol to enter into force.

53. As to subparagraph (b), it was generally felt that it would not be practical to indicate a fixed amount in the draft statute. It was suggested that reference could be made to a certain percentage of the anticipated budget for the first years of the Centre’s operation, which would ensure the financial sustainability of its operation, and that the budget and the percentage could be considered later.

54. It was noted that rules should be prepared, not necessarily in the draft statute, addressing when a Member would be expected to pay its financial contributions under article 8 and the amount to be paid after the entry into force of the Protocol, as the Governing Committee might not yet have adopted the relevant financial regulations.

55. After discussion, the Working Group approved article 13 as follows:

> “1. This Protocol shall enter into force six months after the deposit of the [*number to be determined, including the possibility to require certain number of Members from each of the Annexes*] instrument of ratification, acceptance, approval or accession provided that the expected contributions by States or regional economic integration organizations that are parties to the Protocol exceed [*to be determined, for example, 80 per cent of the anticipated budget for the first five years of operation*].
>
> 2. When a State or a regional economic integration organization ratifies, accepts, approves or accedes to this Protocol after the entry into force of the Protocol in accordance with paragraph 1, this Protocol enters into force in respect of that State or regional economic integration organization [*a short period of time, for example, 30 days*] after the date of the deposit of its instrument of ratification, acceptance, approval or accession.”

D. Annexes, amendments and withdrawal

Article 14 – Annexes

56. The Working Group approved article 14 unchanged.

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Article 15 – Amendments to the Protocol and Annexes

57. There was general support for the amendment process of the articles of the Protocol contained in paragraphs 1 and 2. It was agreed that the second sentence of paragraph 1 should also be placed in paragraph 3 to require proposals to be promptly communicated to all Members. Considering that the entry into force of any such amendment would require unanimity of the Members, it was suggested that the decision by the Governing Committee in adopting the amendment should also be based on unanimity rather than the rule in articles 5(5) and (6).

58. With regard to paragraph 3, a view was expressed that the Executive Committee should not be allowed to propose amendments to the Annexes. More generally, views diverged on paragraph 3, which authorized the Governing Committee to adopt amendments to the Annexes without requiring all Members to consent to be bound by them.

59. One view was that an amendment, which affected the rights and obligations of Members, should be subject to a decision either by consensus or unanimity. It was further said that if the Governing Committee were to adopt an amendment in accordance with article 5(6), the affected Member should be able to decide not to be bound by that amendment. In response, it was said that flexibility should be provided to the Governing Committee to amend the Annexes, for example, based on the reclassification of least developed countries in the United Nations or based on the budgetary and economic situations of the Centre. It was stated that requiring unanimous decisions or allowing Members to opt-out would result in deadlock situations or raise complexities in the Centre's operation. It was also pointed out that article 8(2) addressed the possible default by a Member and that article 16 provided the possibility for a Member to withdraw from the Protocol.

60. Accordingly, it was suggested that the rule for amending Annexes I to III could be subject to articles 5(5) and (6), while the rule for amending Annex IV could be different, for example, requiring a higher threshold in the event of a vote if the increase in the contributions were substantial or requiring a qualified majority among each category of Members in Annexes I to III, or both.

61. After discussion, it was agreed that article 15(3) should be revised along the following lines:

> "3.1 Any Member of the Advisory Centre, the Executive Committee or the Executive Director may submit a proposal to amend Annexes I, II, III or IV to the Governing Committee. The proposal shall be promptly communicated to all Members.
>
> 3.2 The Governing Committee shall only adopt amendments to Annexes I, II and III:
>
> (a) To reflect in Annexes I and II, [any changes to] the list of least developed countries adopted the United Nations General Assembly;
>
> (b) To include in Annex II or III, a State listed in Annex I that requests to be thus included;
>
> (c) To include in Annex III, a State listed in Annex II that requests to be thus included; or
>
> (d) […]
>
> 3.3 The Governing Committee shall endeavour to adopt amendments to Annex IV by consensus. If a decision cannot be made by consensus, the amendment shall be submitted to a vote to each group of Members listed in Annexes I, II and III. The amendment shall be adopted when each group of Members adopts the amendment in accordance with article 5, paragraph 6.

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3.4 An amendment adopted in accordance with paragraphs 3.2 and 3.3 shall enter into force thirty (30) days after the notification is received by the depositary."

62. It was understood that the procedure for making a proposal to amend any of the Annexes would be the same under paragraph 3.1.

63. It was further understood that paragraph 3.2 would include an exhaustive list of circumstances where the Governing Committee would be able to amend Annexes I, II and III and also limit the type of amendments that could be adopted. It was further understood that paragraph 3.2(d) could refer to the objective criteria to be developed at a later stage to classify the States into Annexes II and III (see para. 69 below). It was also noted that the Governing Committee would be expected to provide rules to address the transition of Members from one Annex to another.

64. It was understood that paragraph 3.3 provided for a separate rule to amend Annex IV in case consensus could not be obtained in the Governing Committee. It was noted that, in that case, the amendment would be submitted to a vote to each group of Members and that the decision-making in each group would be governed by article 5(6). It was further noted that the amendment would only be adopted by the Governing Committee when adopted by all groups.

Article 16 – Withdrawal and termination

65. With regard to paragraph 1, it was agreed that a withdrawal would take effect 30 days after the notification was received by the depository.

66. To address a situation where a Member decided to withdraw due to an amendment to the Annexes, it was agreed to include a new paragraph along the following lines:

"*. If a Member submits a notification of withdrawal within three (3) months of the receipt by the depositary of the notification of an amendment to any of the Annexes, the amendment shall not apply to that Member."

67. It was noted that the regulations to be developed by the Governing Committee should set forth when the contributions of Members would be due, the cycle of payment and others, which would determine any remaining contribution of a Member when it withdraws.

Annexes

68. The Working Group considered how Annexes I to III should be prepared (see also para. 15 above). It was widely felt that the aim of classifying potential Members into three categories was to identify the primary beneficiaries of the Centre and those that could be expected to contribute financially to the Centre while also benefitting from its services. It was also mentioned that a clear indication of which category a State would belong to when it became a Member would assist States in deciding whether to become a Member.

69. Accordingly, it was agreed that the list in Annex I should be based on the list of least developed countries adopted by the United Nations General Assembly and any changes thereto. With regard to the lists in Annexes II and III, it was generally felt that a State's capacity to contribute to the financing of the Centre should determine whether it would be listed in Annex II or Annex III and that classification should be based on objective criteria to be developed at a later stage. While assessed contribution to the budget of the United Nations, share of international investments and others were mentioned as possible objective criteria, it was felt that further consideration was necessary. It was mentioned that the objective criteria to be developed could also be used to amend the list after it is adopted.

70. It was also agreed that while a State should not be able to determine the list it would belong to, it should be possible for a State to express its views regarding its list allocation for them to be taken into account. It was also agreed that a State should

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be able to request that it be included in another Annex so as to make a higher amount of contribution. In that context, States to be listed in Annex II were encouraged to consider listing themselves in Annex III. It was noted that an REIO such as the European Union would be included in Annex III.

71. After discussion, the Working Group approved Annex I, unchanged. It was also agreed that the list of States in Annexes II and III would be put in square brackets as indicative lists. It was understood that as indicative lists, they should not have any presumption on a State's final listing in the Annexes. It was further noted that the lists could be replaced with lists of actual Members or with objective criteria informing which category a potential Member would belong to.

72. With regard to Annex IV, it was observed that the minimum contributions could only be fixed based on the budget of the Centre, which was yet to be determined. The Working Group agreed that the minimum contribution of Members in Annexes I, II and III should be on a sliding scale with that of Members in Annex III being the highest. While some doubts were expressed about allowing for one-time contributions, it was stated that a one-time contribution set at a sufficiently high amount could ensure the financial sustainability of the Centre, including by providing an endowment that could generate income to cover annual operating costs. After discussion, the Working Group approved Annex IV, unchanged.

E. Way forward

73. The Working Group requested the Secretariat to revise the draft statute based on the decisions and deliberations, to make any editorial changes and to present it for finalization and adoption in principle by the Commission at its fifty-seventh session in 2024.

74. In that context, it was acknowledged that the operationalization of the Centre would need further preparatory work. To facilitate that work, the Working Group recommended that the Commission consider utilizing an informal process, whereby all interested member States of the United Nations as well as REIOs would be invited. It was suggested that other observers invited to Working Group III could be invited to participate.

75. The Working Group recommended that the preparatory work should be based on the statute adopted by the Commission and address issues such as: (i) ways to establish the Centre within the United Nations system based entirely on extrabudgetary resources; (ii) criteria to determine the location of the headquarters and regional offices; (iii) anticipated budget based on the workload and ensuring sustainable operation; (iv) amount of contributions by Members and methods of payment; (v) objective criteria to classify potential Members in Annexes I to III; and (vi) thresholds for the entry into force.

76. It was suggested that the preparatory work could also address decisions, rules and regulations to be adopted by the Governing Committee, including staff and financial regulations.

77. The Working Group recommended that the informal process: (i) should be led by the bureau of the Commission or of the Working Group; (ii) should not involve any decision-making; and (iii) should report back, as appropriate, to the Commission at its fifty-eighth session or later with recommendations and concrete options, possibly in conjunction with its consideration of the MIIR, for the Commission to make any final decisions on those recommendations.

78. Noting that Thailand had expressed an interest in hosting an intersessional meeting of the Working Group on the implementation of the Centre (A/CN.9/1161, para. 120) and was generally disposed to hosting a meeting on that topic, the Working Group recommended that the Commission consider holding a meeting in Bangkok in December 2024 involving States and REIOs that were interested in becoming a member of the Centre. It was further recommended that the Commission consider

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organizing additional informal meetings, including virtually and at the margins of the Working Group sessions in 2024 and 2025. It was suggested that the summary of such meetings should be presented to the Commission and that the Working Group should be informed of matters to be reported to the Commission. It was noted that the informal process should be transparent and inclusive.

79. Lastly, it was suggested that the Secretariat be requested to provide support for the preparatory work and the informal process, including the preparation of informal documents, subject to available resources. It was further emphasized that this should not be to the detriment of the Secretariat's support for the Working Group or other Working Groups and subject to confirmation by the Commission. The Secretariat was requested to seek possible travel support for participants from developing countries.

IV. Draft guidelines on prevention and mitigation of international investment disputes

80. The Working Group recalled that at its forty-seventh session (Vienna, 22–26 January 2024), it had tasked the Secretariat with updating the draft guidelines on prevention and mitigation of international investment disputes based on inputs received from delegations (A/CN.9/1161, para. 112) and conducted its deliberation based on an informal revised version of A/CN.9/WG.III/WP.235.[10]

81. At the outset, the importance of dispute prevention and mitigation was generally shared. However, diverging views were expressed on whether the draft guidelines were ready to be submitted to the Commission for its adoption. Concerns were expressed that the draft guidelines could be seen as prescribing legal standards for States to follow and as suggesting that dispute prevention was primarily a responsibility of States and not of investors.

82. Suggestions were made that the non-binding nature of the text should be emphasized by renaming the text as a "toolkit", "notes", "compilation of practices", using less prescriptive language and including appropriate disclaimers. This would be so as not to create any obligation or expectation on any State to adhere to the practices mentioned therein. It was suggested that the text could be updated to reflect States' practices, which would ensure comprehensiveness of the text in capturing divergent practices. It was also suggested that the text could be published as a Secretariat text and be possibly updated by the Advisory Centre upon its establishment.

83. After discussion, the Working Group tasked the Secretariat: (i) to prepare the text as a toolkit compiling different States' practices; (ii) to remove any prescriptive language; (iii) to include language to clarify that the toolkit could not be used as a basis for any investment claim; and (iv) to include language on the role of investors in preventing disputes. It was agreed that the document would be submitted to the Commission for its consideration, so that it could take note of the status of the work on that topic, provide further guidance as necessary, but not adopt the guidelines in their current form. It was recommended that the Commission consider the appropriate form of the text and how best to make progress thereafter (including by the Working Group) considering the desire of the Working Group to regularly update the text to reflect new practices. To further supplement the existing compilation of practices, delegations were invited to share their practices of dispute prevention with the Secretariat for inclusion in the toolkit.

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[10] Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/wp.235_rev_clean.pdf.

V. Draft statute of a standing mechanism (A/CN.9/WG.III/WP.239 and A/CN.9/WG.III/WP.240)

84. The Working Group recalled that it had discussed several aspects of a standing mechanism and an appellate mechanism in previous sessions and noted that document A/CN.9/WG.III/WP.239 provided a draft statute of a standing mechanism consolidating the common components in the form of a protocol to the MIIR.

85. Views were expressed that the participation in the discussions on the standing mechanism was without prejudice to a State's views on the desirability or the possible models of a standing mechanism as well as whether it would become a party to any such mechanism.

Single or multiple protocols

86. The Working Group first considered whether the reform elements of a standing mechanism and an appellate mechanism should be addressed in one protocol or in separate protocols.

87. One view was that they deserved to be discussed separately with an aim to develop distinct protocols. It was said that this would allow States to choose which they would become parties to. It was said that working on a single protocol might prejudge the final outcome, whereas there had been no decision by the Working Group on whether to develop a two-tier standing mechanism, a "standing" appellate mechanism or a separate first-instance mechanism and as there were several models to consider. It was said that the two reform elements posed different issues (for example, with regard to governance or appointment of members), which required distinct consideration of their characteristics. It was also said that should there be common elements, it would be possible to include cross references or combine the protocols at a later stage.

88. Another view was that there was merit in working on a single protocol containing both a first-tier and an appellate mechanism. It was said that one of the models of the standing mechanism was a two-tier system and that there could be merit in addressing the common elements so as to avoid duplication and mitigate the risk of further fragmenting the ISDS system. It was also said that flexibility could be built into the single protocol to allow States to opt in or opt out of the first-tier or the appellate mechanism.

89. It was pointed out that regardless of whether the two reform elements were to be addressed in one or separate protocols, discussing the draft statute as contained in A/CN.9/WG.III/WP.239 could streamline the discussions. It was said that such discussion would not prejudge the final form of work (as had been the case when the Codes of Conduct were developed) and would be conducted in a way to ensure that the reform elements were developed to provide States with the ability and flexibility to choose the reform elements that suited their needs.

90. Noting the divergence in views and the need to make progress, the Working Group proceeded to consider the draft provisions in A/CN.9/WG.III/WP.239 only in the context of a first-tier standing mechanism (referred to below as the "Dispute Tribunal"), which was without prejudice to the decision on how to proceed with the two reform elements.

Article 2 – General principles

91. With regard to article 2, it was suggested that:

- The article better reflect the objectives of the standing mechanism as an adjudicatory body (for example, independence, impartiality, fairness, non-discrimination, efficiency and confidentiality) and further reflect the concerns identified by the Working Group (for example, correctness and consistency of decisions, time and costs, diversity);

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- Those general principles be presented in the preamble;
- Whether the standing mechanism would accept voluntary contributions would need further consideration;
- Cooperation with other international and regional organizations might only be sought for operational reasons and not necessarily required; and
- Statutes of existing international courts could be used to identify general principles appropriate for the standing mechanism.

Article 3 – Structure and composition

92. With regard to article 3, it was suggested that:

- The need to establish a Conference of the Contracting Parties (COP) for each protocol of the MIIR be examined, particularly if the MIIR were to envisage a COP of its own;
- The Standing mechanism be represented externally by the Chairperson of the COP or the President of the Dispute Tribunal;
- The term "Registry" be used instead of "Secretariat", and the term "Registrar" or "Secretary" be used instead of "Executive Director";
- The number of the Dispute Tribunal members be determined by the COP or a minimum number be provided in the statute leaving the discretion to the COP to make adjustments;
- The possibility of integrating the standing mechanism into the framework of an existing institution be considered, either temporarily during its initial phases or permanently, as well as the possibility to obtain the necessary services from such institution, also taking into account the impact on costs; and
- The Secretariat further study the above-mentioned matter with the assistance of existing institutions and provide information on potential costs.

Article 4 – Conference of the Contracting Parties

93. With regard to article 4, it was suggested to:

- Allow the Dispute Tribunal to develop its rules of procedure while the COP would adopt those rules or request the Dispute Tribunal to develop supplementary rules;
- Set forth the minimum contribution referred to in paragraph 2(l);
- Clarify the meaning of "fees" in paragraph 2(m);
- Clarify the composition and the role of the Bureau (including the rationale for having a Bureau and whether its members should be remunerated);
- Clarify the discretion of the chairperson in paragraph 6 with regard to the circumstances and scope of participation of observers, and whether and under what circumstances the members of the Dispute Tribunal would be allowed to participate;
- Ensure consistency between the respective functions of the COP and of the Secretariat under article 6;
- Consider the voting rules at a later stage which may differ depending on the type of decisions; and
- Clarify the need to have official and working languages in the draft statute (which could be determined by the COP itself) as well as the languages that could be used in the proceedings.

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Article 5 –Dispute Tribunal and Presidency

94. With regard to article 5, it was suggested to:

- Clarify the "other functions" to be carried out by the Dispute Tribunal including whether they might include any "non-adjudicatory" functions (for example, whether it might provide mediation or other means of dispute resolution as opposed to merely the administrative functions of the Dispute Tribunal);
- Clarify the administrative functions of the Presidency and of the Executive Director;
- Provide for the appointment of the Presidency on a random basis; and
- Ensure geographical rotation of the Presidency.

Article 6 – Secretariat

95. With regard to article 6, it was suggested that:

- If an existing institution were to provide secretariat support, either temporarily or permanently, such possibility and details be articulated, including the functions that could be outsourced (see para. 92 above);
- The Executive Director be appointed by the Dispute Tribunal or by the COP;
- The Executive Director be appointed for a period of 6 years, potentially based on a recommendation by a specified subsidiary body of the COP based on established criteria;
- Criteria for remuneration of the members of the Dispute Tribunal be developed, including how it would be adopted;
- The functions in paragraph 4(e) and (h) be performed by the COP; and
- The meaning of "accept instructions" in paragraph 5 be clarified.

Article 14 – Jurisdiction

96. A number of suggestions were made with regard to the jurisdiction of the Dispute Tribunal. It was said that depending on how consent was to be expressed and captured, the structure of article 14 would need to be adjusted.

97. With regard to the scope of jurisdiction, views diverged on whether reference should be made to "international investment dispute" and if so, how it would be defined (for instance, similar to that in the UNCITRAL Code of Conduct for Arbitrators or "arising directly out of an investment" as found in the ICSID Convention). Views also diverged on whether to adopt or avoid the so-called double-keyhole test and whether to include SSDS in the scope of jurisdiction, while it was said that the scope should not be unduly expanded. It was said that whether SSDS should be subject to jurisdiction would need careful analysis, including whether that question as well as others relating to the scope could be left to the Dispute Tribunal when assessing its own competence in accordance with article 17. It was suggested that the Dispute Tribunal should have the authority to issue advisory opinions and to address counterclaims.

98. Views diverged on whether the jurisdiction should be limited to treaty-based disputes or include disputes based on investment contracts and domestic laws on foreign investment. It was suggested that jurisdiction should relate to "disputes submitted" rather than "claims initiated".

99. With regard to consent to jurisdiction, it was suggested that:

- Paragraph 1 clarify that no "disputing" party could withdraw its consent unilaterally;
- The form of "written consent" in the different scenarios be clarified;

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- Jurisdiction be strictly limited to instances where both or all parties to the underlying agreement had included that agreement in the list, which would avoid the Dispute Tribunal providing an interpretation of an agreement without the consent of all parties to that agreement;
- An interpretation by the Dispute Tribunal would not be binding on parties which had not given consent;
- While unilateral offers of consent could be envisaged, non-Contracting Parties and nationals of those Parties should generally not be able to consent to the jurisdiction based on such offer without that State becoming a Contracting Party or permitting the unilateral offer to become applicable;
- Where non-Contracting Parties and their nationals consent to the jurisdiction, the terms and conditions (including fees and overall costs) be further developed as guidance to the COP;
- The consent of the Contracting Parties in future instruments and in existing instruments through a mechanism akin to paragraph 2 be considered separately and examined in relation to the MIIR; and
- The possibility to extend jurisdiction to disputes between a constituent subdivision or agency of a Contracting Party designated by that State be examined, including how the subdivision or agency would consent to jurisdiction and whether such consent would require the approval of that State.

100. Different views were expressed about the Dispute Tribunal having "exclusive" jurisdiction in paragraph 3. In support, it was said that the listing of instruments by the Contracting Parties would reflect their willingness to subject all disputes arising from the listed instruments to the jurisdiction of the Dispute Tribunal. It was said that in such circumstances, the Dispute Tribunal could have exclusive jurisdiction where agreed to, or unless objected to, by other Contracting Parties. Another view was that it was not legally permissible for the Contracting Parties to modify the consent provided in the listed instruments simply through the mechanism provided in article 14 to take away options for dispute settlement provided therein. It was also said that "exclusive" jurisdiction would deprive investors of the possibility to choose among those options. It was suggested that Contracting Parties should have the flexibility to submit to the jurisdiction of the Dispute Tribunal in a non-exclusive basis, and that jurisdiction should be exclusive only if all parties to the relevant instrument wanted that result.

101. With regard to the list of instruments in paragraph 2, questions were raised on: (i) how they were to be identified in the list; (ii) whether the list would include instruments concluded after the Contracting Party provided its initial list and if so, how that list would be updated; (iii) how the entry into force, amendment or a termination of a listed instrument would be treated; (iv) whether Contracting Parties would be able to amend the list (for example, to add or remove an instrument) and how that would affect consent or any proceeding initiated based on that instrument; and (v) whether disputes arising out of domestic legislation in the list would automatically be subject to the exclusive jurisdiction of the Dispute Tribunal.

Article 15 – Request for dispute resolution

102. With regard to article 15, it was suggested that:

- Paragraph 1 require the request to be also communicated directly to the other disputing party;
- Paragraph 2 require the claims of the requesting party and the grounds thereof to be included in the request and include the words "where appropriate" after the word "jurisdiction" as the disputing parties' consent need not always be indicated; and

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- The requirements in the underlying instrument for the submission of a claim as well as for submission of a notice of intent/arbitration would need to be met in addition to the requirements in paragraph 2.

Article 16 – Panels and the assignment of disputes

103. Views diverged whether the Dispute Tribunal should organize its work through pre-established Panels. It was said that there might be merit in constituting a Panel after a request was registered, so that the composition would better cater to the dispute. With regard to pre-established Panels, questions were raised whether those Panels would be composed of fixed members or there would be rotation of the members.

104. On how to constitute the Panels, while support was expressed for the principle laid out in paragraph 2, doubts were expressed about the practicalities of considering all the elements in addition to the expertise and language required for a specific dispute. The need to ensure flexibility and to consider different criteria (for example, the remaining term of the member) was underlined. It was mentioned that any requirement in the underlying investment agreement with regard to the composition of an adjudicatory body (including regarding nationality or certain expertise) would also have to be considered. A concern was expressed about translation costs where the assigned Panel did not have the language proficiency. It was also said that in other courts, decisions on which adjudicators to ascribe to a particular case were often left to the president of that court.

105. A suggestion was made that members of the Dispute Tribunal could be designated to Panels on a random basis, which would ensure the distribution of work and also ensure that disputing parties could not choose their adjudicator. Questions were raised with regard to how "random" designations could operate, particularly in relation to the elements to be taken into account pursuant to paragraph 2.

106. On the other hand, it was suggested that disputing parties or the Contracting Parties (for example, a respondent State and the home State of the claimant investor) could each designate a member of the Dispute Tribunal to a Panel. The need to provide rules allowing disputing parties to request recusal of a member of the Panel was noted.

107. Views diverged on whether a member of the Dispute Tribunal could be assigned a dispute involving a respondent State or a claimant of his or her nationality. It was said that such circumstances might justify the replacement of that member as provided in paragraph 3 (with another member on a random basis) or the assignment of the dispute to a different Panel. Another view was that, because nationality was not necessarily an indicator of bias and could improve the credibility of the outcome, the second sentence of paragraph 3 be deleted or it should be possible for a Contracting Party to opt out of that sentence.

108. It was suggested that assigning similar disputes to the same Panel would need further elaboration. It was noted that paragraph 4 did not address a situation where two proceedings were joined or consolidated but rather where there would be enhanced efficiency by having similar cases heard before the same panel. It was suggested that some guidance should be provided in the regulations or the statute itself as to the meaning of "similar" (for example, the same measure, treaty, parties or similar factual issues), and when the Presidency might exercise the discretion.

109. It was suggested that paragraph 5 foresee disputes being handled by a single-member Panel and an odd number of Panel members.

110. Views were expressed that appointment of ad hoc members should be allowed to accommodate treaty requirements for particular expertise or language needs. However, doubts were also expressed about appointing ad hoc members. Concerns were raised over impact on collegiality within the Dispute Tribunal, selection criteria as well as costs. It was said that any required expertise could come from experts appointed by the Panel. It was also said that if the appointment of ad hoc members were permitted, they be appointed from the list of suitable candidates prepared by the

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Selection Committee and that their maximum number as well as their terms of service be clearly set forth.

Article 17 – Powers and functions of the Panel

111. With regard to article 17, it was suggested that:

- The role of the Dispute Tribunal (possibly through its Presidency) and that of the Panels in determining whether a dispute fell within the jurisdiction be further examined, also in light of ensuring consistency of the decisions;
- Paragraph 2 note that the determination would be made in accordance with the rules of procedure;
- The heading reflect the contents of the article; and
- Rules on the applicable law be included.

Way forward

112. After discussion, the Secretariat was requested to revise the articles considered by the Working Group based on the suggestions and to provide the drafting of options identified by the Working Group.

VI. Other business

113. The Working Group was briefed on the ongoing resource constraints within the United Nations Secretariat, including staffing limitations, which were placing pressure on the operations of the Secretariat.

114. The Working Group heard an oral report from the representative of Belgium on the seventh intersessional meeting on ISDS reform, which took place on 7 and 8 March 2024 in Brussels. It was said that the intersessional meeting focused on reform elements being or expected to be discussed by the Working Group in 2024, namely the standing mechanism, the advisory centre and certain procedural rules and cross-cutting issues, and how they contributed to a better access to justice for all. The Working Group expressed its appreciation to the Government of Belgium for hosting the intersessional meeting and to the Secretariat for the support provided.

115. The Working Group heard an oral report from the Secretariat on the consultations with Governments on their hosting of intersessional meetings (A/CN.9/1161, paras. 120–121), with the results as reflected below.

Government	*Location and dates (hybrid)*	*Proposed topics (tbd)*
China	Chengdu (24 and 25 October 2024)	Appellate mechanism and MIIR
Republic of Korea	Seoul (early March 2025)	Procedural and cross-cutting issues

116. The Working Group was further informed that its forty-ninth session was tentatively scheduled to take place on 23–27 September 2024 (Vienna), its fiftieth session on 20–24 January 2025 (Vienna) and its fifty-first session on 7–11 April 2025 (New York), all subject to confirmation by the Commission. The Working Group suggested that at the forty-ninth session, it could continue its consideration of the standing mechanism and appellate mechanism based on A/CN.9/WG.III/WP.239 and A/CN.9/WG.III/WP.240 and further consider the topics of procedural and cross-cutting issues as well as the MIIR.

117. It was explained that the arrangements for the intersessional meetings aimed to address the concerns expressed with regard to the number and frequency of the intersessional meetings, the constraints faced by each of the Governments in hosting

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the meetings, and the need to make progress on a number of the reform elements which were expected to be presented to the Commission in 2025 (A/CN.9/1054, annex). Concerns were expressed about the increased number of informal meetings and the use of informal documents to make progress. In response, it was mentioned that to further ensure the inclusiveness of the process, the host governments had agreed to hold the meetings in hybrid fashion and, resources permitting, to provide interpretation in at least two official languages of the United Nations. The Secretariat was requested to make efforts to provide travel support to delegations of developing countries to participate in the above meetings. It was noted that the host governments had shown flexibility as to the topics for discussion, which would need to be adjusted to reflect the progress and agenda of the Working Group and the Commission.

118. After discussion, the Working Group expressed it appreciation to the Governments of China and the Republic of Korea and welcomed their proposals to host the intersessional meetings respectively in October 2024 and March 2025 on topics to be determined in due course.

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