

All comments on this outline should be communicated to the UNCITRAL Secretariat with the subject “Comments on the financing of a permanent multilateral body”.

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Cost and financing of a permanent multilateral body

The following provides an outline of the working paper to be prepared by the Secretariat with regard to the cost and financing structure of a permanent multilateral body to handle investor-State disputes (referred to as the “Tribunal”). Considering that the Working Group has yet to discuss the establishment and operation of such a multilateral investment tribunal, the working paper is being developed based on traditional international court models and some underlying assumptions, which will need to be adjusted as the Working Group makes progress.

This outline is being shared during the informal meetings of the Working Group held on 7 December 2021 to obtain feedback from participants to Working Group III. According to the workplan ([A/CN.9/1054](#), Annex), other aspects of the Tribunal are scheduled to be discussed at the 42nd session of the Working Group (14-18 February 2022), mainly the selection and appointment of ISDS tribunal members and the enforcement of decisions. Deliberations at that session would need to be further reflected in this working paper.

The figures provided in this outline are only estimates, as there are a number of variances depending on how the Tribunal would operate. As an outline, the intention is to illustrate possible components of the Tribunal’s budget and possible options for financing. The objectives for establishing the Tribunal, its scope of jurisdiction, legal bases of disputes to be handled, functions to be carried out (first instance, appellate mechanism, state-to-state dispute and ADR services), its relationship with any existing mechanism, its caseload, the working language(s) and interpretation as well as library services could all have an impact on the budget of the Tribunal. While the operational structure will determine the financial resources required, it may also be the case that the financial resources available will determine the operational structure of the Tribunal.

This outline does not envisage the establishment of an advisory centre in connection with the Tribunal simply for the sake of simplicity and as an initial draft on the cost and financing of a multilateral advisory centre had been prepared for comments (available [here](#)).

The figures provided with regard to other permanent bodies in this outline are for reference only and would be further verified and updated. For that purpose, the Secretariat circulated a questionnaire (see Annex) to 24 bodies on 20 September 2021 that handle international disputes.¹ As of 30 November 2021, the Secretariat has received 3 responses from the ICJ, the ECtHR and the CJEU. With such information, the Secretariat aims to provide the Working Group as well as the Commission with an analysis of the budget structure of existing international and regional courts as well as tribunals.

¹ The African Court on Human and Peoples’ Rights; Inter-American Court of Human Rights (IACHR or IACtHR); World Trade Organization (WTO), Dispute Settlement Body (DSB) and the Appellate Body (AB); United Nations Compensation Commission (UNCC); Union of South American Nations (UNASUR dispute settlement body); United Nations International Criminal Tribunal for Rwanda (ICTR); International Criminal Tribunal for the former Yugoslavia (ICTY); The Extraordinary Chambers in the Courts of Cambodia (ECCC); Residual Special Court for Sierra Leone (RSCSL); The International Residual Mechanism for Criminal Tribunals (IRMCT); Permanent Court of Arbitration (PCA); The Common Court of Justice and Arbitration of the Organization for the Harmonization in Africa of Business Law (CCJA-OHADA); Arab Investment Court; International Court of Justice (ICJ); International Criminal Court (ICC); G.C.C Commercial Arbitration Centre (GCCAC); European Court of Human Rights (ECtHR); Court of Justice of the European Union (CJEU); Court of Arbitration for Sport (CAS); Tribunal Permanente de Revisión del Mercosur (MERCOSUR); Iran-United States Claims Tribunal (IUSCT); International Tribunal for the Law of the Sea (ITLOS); International Centre for Settlement of Investment Disputes (ICSID); Economic Court of the Commonwealth of Independent States (Economic Court of the CIS).

I. Assumptions

A permanent multilateral body with a first and an appellate level is established under the auspices of the United Nations without any link to an existing body. This body becomes operational as of 2028, after a treaty conference to establish the body in 2027.

Assumptions

- Expected workload: 10 first instance cases + 3 appellate cases per year (2028-2032)
- Number of appellate body members: 7 (full-time, ASG level)
- Number of first-instance court members: 15 (part-time, D-2 level)
- Registry/Secretariat: 12 professional staff & 10 general staff
- Governance structure: Meeting of the Tribunal-constituting States Parties and meeting of members of the Tribunal to be supported by the Registry/Secretariat
- Income structure: Annual contribution from member States and payment of fees by disputing parties

II. Cost structure

1. The three broad categories of the costs of the Tribunal are:
 - Remuneration of the members of the appellate body and the first instance court;
 - Remuneration of the staff of the registry; and
 - Annual operating expenses.

1. Remuneration of the members of the appellate body and the first instance courts

2. The remuneration of the members of the Tribunal could vary depending on a number of variables, such as their employment status (full-time, part-time or on-call), level of payment, privileges and immunities including tax benefits, pension as well as health insurance schemes. This paper takes the approach that the members would be remunerated with monthly salary plus benefits based on a UN salary scale and benefits.

3. The estimate total cost of remuneration of the members of the appellate body and the first instance courts is **4,017,319 USD**.

7 appellate body members (ASG level)	301,117 USD ² x 7	2,107,819 USD
15 first-instance court members (D2 level, 50% part-time ³)	(254,600 USD x 50%) x 15	1,909,500 USD

4. For the annual 2019-2020 budget cycle, the ICJ had a budget of 7,381,400 USD for its 15 permanent judges (emolument, allowance, pension, duty allowance and travel), of which

² To be verified and updated.

³ UNODC Revised Standard Salary Costs 2021-2024, D2 level. The “part-time” assumption is to provide a comparison with the full-time costing as provided for appellate body members. The figure does not take into account travel costs of part-time judges to and from the Tribunal.

2,519,400 USD is allotted for pension purposes. Considering only the salary portion (3,821,700 USD), this amounts to an average of 254,780 USD per judge.⁴

5. According to the proposed budget for 2021-2022, ITLOS has estimated 7,033,800 EUR for its 21 judges, of which 2,226,600 EUR is allotted for pension purposes.⁵ Under case-related costs, a total of 1,509,600 EUR of special allowance is allocated to full-time judges and 177,700 EUR for judges ad hoc. Considering only the salary portion (annual and special allowance but not the case-related special allowance, 4,431,600 EUR), this amounts to an average of 211,028 EUR (approximately 238,883 USD) per judge.

6. For 2021, ICC budgeted a total of 4,711,000 EUR for its 14 full-time judges (salary, pensions, expenses and allowance), of which 921,900 EUR was for pension purposes. Considering only the salary portion (2,661,900 EUR), this amounts to an average of 190,135 EUR (approximately 214,500 USD) per judge.⁶

7. According to the response received, the ECtHR has 47 full-time judges and has allocated a budget of 12,155,328 EUR. Annual costs per judge amount to 258,624 EUR but this includes private medical & social insurance and pension.

8. While the working paper will be prepared on the basis of a salary-based system, it may be possible to envisage a monthly retainer combined with fee-based remuneration (per diem or hourly rates). Under this approach, the members may be responsible for their own social security (health insurance and pension).⁷

9. For example, the WTO Appellate Body members receive a retainer fee of 9,085 CHF per month with a fee of 783 CHF per each day of work along with a per diem of 374 CHF or a

⁴ See Report of the International Court of Justice (1 August 2019–31 July 2020) (A/75/4). There were 28 instances where States parties chose judges ad hoc during the period under review, with these functions being carried out by 15 individuals (the same person may sit as judge ad hoc in more than one case). The budget for 2020 has allotted 582,800 USD for judge ad hoc (A/75/4, para. 63). For the 2020-2021, the ICJ has budgeted 8,134,600 USD for its 15 permanent judges. The President has a special allowance of 25,000 USD per annum. Other entitlements depend upon the status opted by the judges, between resident and non-resident. See Report of the International Court of Justice (1 August 2020–31 July 2021) (A/76/4).

⁵ Draft budget proposals of the International Tribunal for the Law of the Sea for the budget period 2021–2022 (SPLOS/30/5). In determining the level of remuneration of the members of the Tribunal, in 1996, the fourth Meeting of States Parties adopted the principle of maintaining equivalence with the remuneration levels of judges of the ICJ. The fourth Meeting of States Parties also decided that the annual remuneration of judges other than the President would consist of three elements (see SPLOS/8 and SPLOS/WP.3/Rev.1):

(a) An annual allowance, payable monthly, which is one third of the maximum annual net base salary (based on the current level of remuneration);

(b) A special allowance payable for each day that a judge is engaged in the business of the Tribunal. The maximum special allowance is one third of the annual net base salary divided into 220 working days;

(c) A subsistence allowance for each day that a judge is required to be present at the seat of the Tribunal. The level of subsistence allowance is determined by the International Civil Service Commission and is paid up to a maximum of one third of the annual net base salary.

In accordance with article 18, paragraph 2, of the Statute of ITLOS, the President is required to reside at the seat of the Tribunal and receives an annual remuneration of \$181,840. The annual allowance of the other members of the Tribunal amounts to one third of the maximum annual remuneration (\$60,613). In addition, the President is paid an allowance of \$25,000 per annum in line with the practice at the ICJ, whose President has been entitled to this amount since 1 January 2011, in keeping with the decision adopted by the General Assembly on 24 December 2010 (see resolution 65/258, para. 6). The President is not entitled to a special allowance or subsistence allowance for attending meetings of the Tribunal (SPLOS/30/5, paras. 39-40).

⁶ In addition to its 14 full-time judges, the ICC budgeted an annual allowance for 4 non-full-time judges in an amount of 240,000 EUR (approximately 270,703 USD). See Report of the Committee on Budget and Finance on the work of its thirty-fifth session, Document ICC-ASP/19/15, paras. 40-42, and Proposed Programme Budget for 2021 of the International Criminal Court, Document ICC-ASP/19/10, Annex VI(a).

⁷ The EU-Vietnam FTA takes this approach but further provides that upon a decision by the Trade Committee, the retainer fee and other fees and expenses may be permanently transformed into a regular salary and that in such an event, the Members shall serve on a full-time basis and the Trade Committee shall fix their remuneration (Articles 12.17 and 13.17, EU-Vietnam FTA). The CETA provides in Article 8.27 that the Members of the Tribunal shall be paid a monthly retainer fee to be determined by the CETA Joint Committee. The fees are to be paid equally by both Parties into an account managed by the ICSID Secretariat. The CETA Joint Committee may, by decision, transform the retainer fee and other fees and expenses into a regular salary, and decide applicable modalities and conditions. As regards the Appellate Tribunal, CETA Article 8.28.7 provides that the CETA Joint Committee shall set the remuneration of the Members of the Appellate Tribunal and provisions related to the costs of appeals.

monthly rental subsidy. They also receive 330 CHF per month for administrative expenses. The remuneration of panellists (apart from travel expenses) is 900 CHF per each day of work along with a per diem of 374 CHF. The annual budget for the members of the Appellate Body was 791,000 CHF in 2019 but reduced to 0 EUR in 2021 due to cessation of active proceedings (a lower amount is included instead in temporary assistance). The 2021 budget for panellist's fees was 1,300,000 CHF.⁸

10. As regards ICSID, each member of an ICSID tribunal is entitled to receive a fee of 3,000 USD per day of meetings or other work performed in connection with the proceedings (corresponding to US\$375 per hour). They are also entitled to reimbursement of travel and other expenses reasonably incurred in connection with the proceedings. Arbitrator costs and other direct costs of the proceedings (eg: transcription, interpretation, non-ICSID venue fees, etc.) are paid from advances made by the parties and managed by ICSID. The amount of advances used for these purposes was 36,277, 763 USD in 2021 and 34, 921, 658 USD in 2020.

2. Remuneration of the staff of the registry/secretariat

11. The staffing requirements of the registry/secretariat (hereinafter, referred to simply as “registry”) have been calculated based on the anticipated caseload and the total number of tribunal members (22). The remuneration of the staff of a registry, who will provide services to the members of the Tribunal and the member States of the Tribunal will vary depending on the number of staff, their employment status and their salary structure as well as the services to be provided. The estimate cost below has been calculated based on the assumption that the staff members of the registry would be employed by the Tribunal and paid a salary. An alternative approach would be to remunerate staff members of the registry by a system of fees for services. Under this approach, the staff will be remunerated under hourly fees, annual fees, a percentage of the amount of the claim, a value of salary or a combination of these elements.

12. According to that assumption, the estimate total cost of remuneration of the staff members (including all benefits) of the registry is **3,398,717 USD**:

12 professional staff (1 ASG, 1 D-2, 1 D-1, 2 P-5, 4 P-4, 3 P-3)	2,411,717 USD
10 general staff (4 G-6, 4 G-5, 2 G-4)	987,000 USD

13. This is substantially lower than other bodies that are fully operational. For example, the response provided by the ICJ indicated that it has a registrar⁹ and 117 staff members¹⁰ assisting 15 judges. The registry component of the ICJ budget amount to 18,446,500 USD.

14. According to the proposed budget for 2021-2022, ITLOS has estimated 8,748,600 EUR for staff costs and 685,200 EUR for case-related staff costs.

15. The ICC has 288 staff members with a total cost of 22,672,800 EUR.¹¹ WTO DB is supported by the Legal Affairs Division and relevant divisions of the WTO secretariat responsible for the invoked agreement and the Appellate Body (7 members) has its own Secretariat with 18 staff

⁸ See 2021 WTO Budget Proposal (9 November 2020) (WT/BFA/W/523/Rev.1).

⁹ The Registrar has diplomatic, administrative and judicial functions. He/she directs the work of the Registry, which is the international secretariat providing support to the Court (composed of 15 judges) in the discharge of its functions. The activities of the Registry are mainly of administrative nature (personnel matters, budget, building, security, IT, information, linguistics). The Legal Office of the Registry also assists the Court in its judicial functions.

¹⁰ 1 ASG, 1 D-2, 1 D-1, 4 P-5, 17 P-4, 17 P-3, 20 P-2/P-1, 6 GS (Principal Level), 50 GS (Other Level). The staff members are responsible for among others, assisting during the Court's meetings, responsible for research, translations, publications, administrative work including finance and security. See Report of the International Court of Justice 1 August 2020–31 July 2021 (A/76/4).

¹¹ [figures of the registry to be verified] Overall, the ICC has around 900 staff members (see <https://www.icc-cpi.int/about>) with a total cost of 105,334,500 EUR (see Report of the Committee on Budget and Finance on the work of its thirty-fifth session, Document ICC-ASP/19/15, Table 10, p. 34).

members.¹² The annual budget of the Appellate Body and its secretariat was 7,579,900 EUR in 2019.¹³

16. According to the response received, the ECtHR's registry has budgeted 58,682,968 EUR to carry out its functions in 2021. This includes, among others, remuneration of permanent staff (45,421,961 EUR) and temporary staff (1,112,255 EUR). Pension scheme for the staff amounts to 7,751,200 EUR.

17. According to the ICSID 2021 Annual Report, cost for staff services (including benefits) amounted to 11,554,039 USD in 2021 and 11,363,199 USD in 2020.¹⁴

3. Annual operating expenses

18. The third element relates to both the initial installation costs (furniture, material and supplies and basic services) as well as annual recurring operating costs, which would cover any rental of the premises,¹⁵ costs of building maintenance (including utilities and security), services and supplies (including ICT services) and travel.

19. Based on the figures prepared for the advisory centre (scenario A, available [here](#)), the annual recurring operating cost of the registry is estimated at **2,352,164 USD**.

Recurring costs	Sq m	Unit	Total sq m	Cost per unit	Sub-Total
					\$2,352,164
a) Buildings maintenance, utilities (including security)					\$440,164
Management office	27	24		\$10,080	\$241,920.00
Standard Office	13.5	24		\$5,040	\$120,960.00
Conference room	45	3		\$16,801	\$50,403.00
Library	45	1		\$16,801	\$16,801.00
Administrative booth/reception	27	1		\$10,080	\$10,080.00
b) Services and supplies					\$1,512,000
ICT hardware and software support, server hosting		44		\$3,500	\$154,000
Software licenses/digital subscriptions (library, electronic communication)		2		\$80,000	\$160,000
Telephone costs ⁵		44		\$9,500	\$418,000
Translation costs ⁵		2,000		\$230	\$460,000
Stationery and supplies		44		\$2,500	\$110,000
Photocopying/printing equipment rental and maintenance		44		\$2,500	\$110,000
Website hosting and maintenance		1		\$25,000	\$25,000
Database development (case law)		3		\$25,000	\$75,000
c) Travel					\$400,000

¹² Due to the increase in dispute settlement activity, 30 posts had been redeployed to the legal divisions. At the end of 2018, the number of permanent positions in the legal divisions stood at 25 in the Appellate Body, 34 in the Legal Affairs Division and 31 in the Rules Division, up from 17, 23 and 20, respectively, in 2014, when the period of reallocation began. (WTO Annual Report 2019, pp. 172)

¹³ WTO Annual Report 2019, pp. 179.

¹⁴ Available at <https://icsid.worldbank.org/resources/publications/icsid-annual-report>.

¹⁵ For example, the ICJ costs related to the rental of premises amount 1.7 million USD.

Travel costs		1	400,000	\$400,000
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20. According to the ICJ budget of 2020, the programme support expenses amount to 3,997,400 USD. This includes 966,000 USD for data processing services and 375,000 USD for maintenance and rental costs of equipment.

21. According to the proposed budget of 2021-2022 of ITLOS, the operating expenditure amounts to 3,405,700 EUR, which includes the library and related costs of 336,400 EUR.

22. According to the response received, ECtHR's annual operational expenditure amount 2,797,781 EUR, among which 254,449 EUR are allocated for interpretation and translation costs, 1,807,800 EUR for IT-related costs, and 85,700 EUR for library costs.¹⁶

23. According to its Annual Report, ICSID's administrative expenses amounted to 14,328,623 USD in 2021. Most of the administrative expenses related to staff services, followed by office accommodation, and communication and information technology costs.

4. Summary

24. In sum, the estimate total cost for operation of the Tribunal would amount to approximately **9.8 million USD per year.**

Remuneration of the members of the appellate body and the first instance courts	4,017,319 USD
Remuneration of the staff of the registry/secretariat	3,398,717 USD
Annual operating expenses	2,352,164 USD
Total	9,768,200 USD

25. The 2020 budget of the ICJ as adopted by the General Assembly was 28,145,500 USD.

26. The proposed 2021-2022 budget of ITLOS is 24,412,400 EUR.

27. The 2021 total budget of the ICC is 144,917,200 EUR.¹⁷

28. The 2021 budget of the CJEU was 444,049,000 EUR with 75% of the budget dedicated to expenditures of judges and staff members and 25% to infrastructure expenditure.

29. The 2021 budget of the ECtHR was 73,994,300 EUR, which covers judges' remuneration, staff salaries and operational expenditure (information technology, official journeys, translation, interpretation, publications, representational expenditure, legal aid, fact-finding missions etc.) but not expenditure on the building and infrastructure (telephone, cabling etc.). Such services are provided by the Council of Europe's central services.

5. Other issues

Establishment cost

30. There are also other expenses that should be taken into account: (i) Establishment cost (including the cost for holding the treaty conference¹⁸); (ii) venue and premises (in one location or to be located in different regions).

31. For example, based on the figures prepared for the advisory centre (scenario A, available [here](#)), the initial installation cost of the Tribunal would be approximately **669,106 USD.**

¹⁶ Other operational costs include printings and email, official journey of registry staff, telecommunication equipment, representational expenses, central office, staff training, visibility and experts' consultants.

¹⁷ See Report of the Committee on Budget and Finance on the work of its thirty-fifth session, Document ICC-ASP/19/15, page 4.

¹⁸ According to recent figures for holding one additional week of Working Group session, the total amount was 356,800 USD including interpretation (83,000 USD) and documentation/translation (273,800) services.

INSTALLATION COSTS						\$669,106
a) ICT equipment¹					\$144,260	
Laptops w. docking stations and monitors		44		\$1,547	\$68,068	
Fixed telephone		44		\$308	\$13,552	
Personal Printer		20		\$300	\$6,000	
Mobile telephone		44		\$1,060	\$46,640	
Videoconferencing equipment		2		\$5,000	\$10,000	
b) Furniture					\$369,846	
Individual Office ¹					<u>\$187,746</u>	
Management Office furniture set (D1/D2 level)		24		\$6,117	\$146,808	
Standard Office furniture set (P5 level)		2		\$2,280	\$4,560	
Standard Office furniture set (G6-P4 level)		18		\$2,021	\$36,378	
Conference Room					<u>\$84,600</u>	
Conference Table		3		\$12,000	\$36,000	
Conference/visitor chairs		108		\$450	\$48,600	
Other furniture					<u>\$97,500</u>	
Bookcases, filing cabinets		30		\$2,500	\$75,000	
Coffee table, 4 armchairs		3		\$7,500	\$22,500	
c) Materials and supplies					\$50,000	
Library books		1		\$50,000	\$50,000	
d) Services					\$105,000	
Website development (multilingual)		1		\$80,000	\$80,000	
Database set-up (case law)		1		\$25,000	\$25,000	

Phased operation

32. The working paper will be prepared with the assumption that the expected workload of the Tribunal would be an average of 10 first instance cases and 3 appellate cases per year for the first five years of operation (2028-2032).¹⁹ If the workload is less, the cost of the Tribunal during the first few years may be reduced, both with regard to members of the Tribunal as well as the staff members of the registry.²⁰ The required number of ratifications in the constituting treaty as well as the process for selection and appointment of the members of the first-instance court and the appellate body (which may be delayed) could also impact the phased operation of the Tribunal.

Legal costs of disputing parties

33. The working paper does not intend to address the legal costs of disputing parties (such as the costs of agents, counsels, experts, witnesses), which, however, constitute a significant portion of the overall cost of ISDS cases. It is envisaged that the multilateral advisory centre may assist in reducing legal costs, but whether and how such costs can be absorbed in the Tribunal would need to be further analysed.

¹⁹ See for example, UNCTAD, Investor-State dispute settlement cases: facts and figures 2020 available at: https://unctad.org/system/files/official-document/diaepcbinf2021d7_en.pdf.

²⁰ The United Nations Convention on the Law of the Sea (which includes the Statutes of ITLOS in Annex VI), which was negotiated from 1973 to 1982, opened for signature in 1982, entered into force in 1994 (after 60 ratifications), judges were elected in August 1996, with the first case submitted in November 1997. The WTO Appellate Body was established in 1995 with four cases the year after.

34. Similarly, the working paper does not intend to address the rules on allocation of cost, which is an element of the procedural reforms that the Working Group will examine separately. The general principle in most permanent dispute settlement bodies is that each party bears its own costs.

III. Income structure

1. Contributions from UN member States established as a United Nations body

35. If the Tribunal is established under the auspices of the United Nations similar to the ICJ (subject to the approval by the General Assembly),²¹ it may be possible to incorporate the budget of the Tribunal into the budget of the United Nations. This would mean that UN member States would be responsible for the financing the Tribunal in the same proportion and in accordance with the scale of assessments decided by the General Assembly.²² Contributions range between 27,136 USD to 654,778,938 USD and are based mostly on estimates of gross national income. This could ensure stability of the income structure.

36. Similarly, the expenditure of the ECtHR is borne by the Council of Europe and the Court's budget is part of the ordinary budget of the Council of Europe.²³ The contributions of Member States to the Council of Europe are fixed according to scales taking into account population and gross national product.

2. Tribunal-constituting member State contribution-based income structure

37. Another income structure would be that States members of the treaty constituting the Tribunal would be responsible for the expenditures of the Tribunal. This would be in line with the general approach that the expenses of international courts are borne by contracting states of that court.

38. However, this may pose burden on the first few member States as they would need to be responsible for the installation cost of the Tribunal. One way to reduce this burden is to require a substantive number of ratifications for the treaty to enter into force, making it possible for those member States to share the burden.

39. Once operational, how to distribute the expenses of the Tribunal to its constituting member States would need to be considered. For example, by equal allocation or according to a scale of assessment based on the economic level (national income, per capita income), the number of investment treaties subject to the Tribunal or the use of Tribunal services (either as the State of the claimant investor or as the respondent State).

40. With respect to the WTO, DSU Article 8:11 provides that panellists' expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration. Similarly, DSU Article 17:8 provides that the expenses of persons serving on the Appellate Body, including travel and subsistence allowance, shall be met from the WTO budget. The budgets of the WTO Secretariat and the Appellate Body Secretariat are part of the WTO budget, which is paid by the WTO Members according to the scale of contributions apportioning the expenses of the WTO. In the WTO, contributions range between CHF 29,325 to CHF 22,939,714,960 and are based on the share of world trade.²⁴

41. In the PCA, contributions range between 535 EUR to 53,550 EUR and are based on the Universal Postal Union contribution class system.

²¹ Article 33 of the ICJ Statute.

²² UN Charter 17(2), Statute 33. Article 33 of the ICJ's Statute provides that, '[t]he expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.'

²³ ECHR Art 50.

²⁴ [WTO Annual Report 2021](#), pp. 202-203.

42. As regards ITLOS²⁵, contributions of States Parties to the budget for 2021-2022 are based upon the scale of assessments of the regular budget of the United Nations for the preceding financial year, adjusted to take account of participation in the Convention. The meeting of States Parties decided that a floor rate of 0.01 per cent and a ceiling rate of 22 per cent would be used in establishing the rate of assessment for States Parties for the budget for 2021-2022. Contribution of the European Union to the budget would amount to 110,000 EUR for each year.

43. It would also be necessary to address concerns that under this approach, States would not only provide protection under their respective investment treaties to investors but also fund the mechanism for investors to raise claims against those States.

44. Furthermore, in this income structure, the rights and obligations of the member States, including its investors would need to be clarified, for example, on which States can nominate candidates, nationality restrictions on tribunal members and more importantly, on who can access the Tribunal (whether only claims against constituent States raised by investors of constituent States would be allowed or whether non-constituent States as well as their investors could access the Tribunal).

3. Voluntary contribution-based income structure

45. Another possibility would be to operate the Tribunal based on voluntary contributions, which, however, poses challenges on the sustainability of its operation. Nonetheless, some of the establishment costs (including the premises of the Tribunal and installation cost) as well as the recurring operation cost could be borne by, for example, the host State. It may also be possible to envisage voluntary contribution from other entities, such as private donors or development assistant agencies.

46. Article 116 of the Rome Statute of the ICC provides that the Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities. The ECtHR's 2021 budget, in turn, includes 2,100,000 EUR of voluntary contributions from States, in addition to the national contributions.

4. Users' fee-based income structure

47. Inter-State dispute settlement mechanisms usually do not require a filing fee (ICJ, WTO, Iran-US Claims Tribunal) and dispute settlement mechanisms set up by States for claims by individuals also generally do not require fees (ECtHR, ECJ, IACHR).

48. However, in the case of ISDS, one possible income structure would be for the users of the Tribunal (both investors and respondent States) to be charged a fee, which would contribute to the financing of the Tribunal. The fee to be charged could vary, from covering the minimal cost of administration of a case to an amount which will contribute significantly to the Tribunal budget. However, the latter approach could raise questions about the integrity of the system, as it would lead to a profit-driven approach with the Tribunal attracting more ISDS cases to ensure the continuity and sustainability of its operations.

49. While the fee-based income structure could reduce the burden of States and encourage them to take part, the fees to be charged should generally be limited to recovery of operational costs of the registry and not to remunerate the members of the first-instance court and the appellate body. It should also not result in the increase of costs for disputing parties, which has been identified as a concern under the existing mechanism.

50. Similar to member contributions, fees to be charged may be on a sliding scale, depending on the member State's contribution, level of development and other factors.

51. ICSID generated 15,002,246 USD from case-related revenue/fees in 2021 and 15,074,014 USD in 2020. Therefore, ICSID's administrative expenditures are covered by fee income. If there is any excess of revenues over expenditures in a given year, ICID retains this amount in a reserve fund to address any unexpected expenditures in the next year. This is required in particular due to the volatility of caseload and the continuing nature of costs such as staffing and rent. If there

²⁵ Information available at <https://www.itlos.org/en/main/general-information/finances>

is a shortfall in revenues over expenditures in a given year, ICSID covers the shortfall from its reserve account.

52. Similarly, the expenditures of the PCA are paid by the requesting party/parties of the service. A schedule of fees & costs applies to the PCA services.²⁶

5. Summary

53. As illustrated above, there is a wide spectrum of ways to finance the Tribunal. It is anticipated that the working paper will be developed to reflect an income structure that derives mainly from annual contribution from Tribunal-constituting member States to be supplemented by payment of fees by disputing parties. Whether and to the extent that other entities (trade associations, bar associations, third-party funders and law firms) can contribute financially to the Tribunal will also be considered. Ways to ensure stability of income and sustainability of the operation would also be sought.

54. While the scenario foresees that the Tribunal will be established without any link to an existing body, it is likely that the setting up of an entirely new, independent body would be more costly and could take longer. A different approach would be to design the Tribunal as an add-on to an existing system or under the auspices of an existing institution, which could reduce the burden. However, such an approach would require the approval by the existing system or institution.

²⁶ See *Schedule of Fees and Costs* <https://pca-cpa.org/en/fees-and-costs/>

Annex: Questionnaire circulated

I. Initial establishment costs (non-recurring)

1. What were the main components of the initial establishment costs?

2. Could you provide an overall estimate of such costs?

3. What were the sources of funding for the initial establishment? Was there any contribution made by the host State?

4. Was a host country agreement concluded for the establishment? If so, were there provisions that have cost implications (for example provision of venue or tax privileges)?

II. Annual operating costs (recurring)

5. What is your annual budget? If the information is publicly available, please provide a link to the relevant document(s).

6. What is the annual cost for adjudicator (judges, tribunal members and those in similar positions) compensation? Please specify the number of adjudicators, their employment status (full-time or part-time) and any benefits that have a significant cost implication (such as insurance or pension schemes).

7. What is the annual cost relating to the registrar/secretariat staff members? Please provide a brief outline of the major functions carried out by the registrar/secretariat and indicate the number of staff members (if possible, including their level and employment status).

8. Do you offer any training opportunities or fellowship programs and if so, what are the related costs?

9. In addition to the above, what are the main components of the annual operating costs of the registrar/secretariat (for example, rental of premises, maintenance costs including for equipment and IT-related services, library operation, translation and interpretation services)? Please provide an estimate of such costs.

III. Sources of funding

10. How do you finance your operation and what are the sources of funding? Do you rely on annual contributions from member States and if so, how are the contributions assessed?

11. Do you charge fees for any of the services provided and if so, what proportion of the income do such fees constitute? Do you rely on voluntary contributions and if so, for which part of your operations?

IV. Other information

12. Please provide any other relevant information regarding costs or financing.