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**United Nations Commission on
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Possible reform of investor-State dispute settlement (ISDS)

Draft statute of a permanent tribunal for international investment disputes

Note by the Secretariat

I. Introduction

1. The Working Group considered the establishment of a standing mechanism and an appellate mechanism at its resumed thirty-eighth session in January 2020 ([A/CN.9/1004/Add.1](#), paras. 14–133), fortieth session in February 2021 ([A/CN.9/1050](#), paras. 13–116), forty-second session in February 2022 ([A/CN.9/1092](#), paras. 15–78), forty-third session in September 2022 ([A/CN.9/1124](#), paras. 13–41) and forty-fourth session in January 2023 ([A/CN.9/1130](#), paras. 119–166), as well as at the sixth intersessional meeting held in Singapore in September 2023 ([A/CN.9/WG.III/WP.233](#)).

2. From its forty-eighth to fifty-second sessions, respectively held in April 2024, September 2024, January 2025, April 2025 and September 2025, the Working Group considered a draft statute establishing a standing mechanism for the resolution of international investment disputes based on documents [A/CN.9/WG.III/WP.239](#), [A/CN.9/WG.III/WP.240](#), [A/CN.9/WG.III/WP.241](#) and [A/CN.9/WG.III/WP.256](#) ([A/CN.9/1167](#), paras. 84–112, [A/CN.9/1194](#), paras. 13–56, [A/CN.9/1195](#), paras. 70–121, [A/CN.9/1196/Add.1](#), paras. 6–66 and [A/CN.9/1238](#), paras. 82–131 respectively). During those sessions, the Working Group focused its deliberations on draft articles relating to the establishment and structure of a standing mechanism, the selection and appointment of Tribunal members, the Dispute Tribunal and the Appeals Tribunal, including the relevant procedure. At its forty-ninth session in September 2024 and fifty-second session (first part) in February 2025, the Working Group considered the draft multilateral instrument on ISDS reform (MIIR) contained in [A/CN.9/WG.III/WP.246](#) and identified ways to implement its protocols, including the statute of a standing mechanism ([A/CN.9/1194](#), paras. 105–121 and [A/CN.9/1196](#), paras. 31–94). During this period, the eighth intersessional meeting was held in Chengdu, China, in October 2024 to discuss an appellate mechanism ([A/CN.9/WG.III/WP.249](#)).



3. At its fifty-second session in September 2025, the Working Group discussed the structure and design of a standing mechanism ([A/CN.9/1238](#), paras. 96–131) and agreed to develop two separate statutes, one for a first-tier standing body and another for an appellate standing body. It was further agreed that the two bodies, if established, would need to be separate from each other while exploring opportunities to cooperate and coordinate to promote harmonization and maximum efficiency ([A/CN.9/1238](#), para. 112).¹
4. Accordingly, this Note contains a draft statute of a first-tier standing body (referred to as the “permanent tribunal for international investment disputes”) based on the previous deliberations of the Working Group. Reference to the previous deliberations is found in the footnote to each article. Square-bracketed texts either reflect suggestions made during those sessions or policy choices to be made by the Working Group.
5. A draft statute of an appellate standing body (referred to as the “permanent appellate tribunal for international investment disputes”) is contained in document [A/CN.9/WG.III/WP.260](#). Both statutes have been prepared to form protocols to the MIIR, without prejudice to any determination on their final form.
6. Consistent with the established practice of the Working Group, issues that had been resolved at previous deliberations should not be reopened in considering the draft statute, unless and to the extent necessary to adapt to the establishment of two separate bodies and their specific characteristics ([A/CN.9/1238](#), para. 114).

II. Draft statute of a permanent tribunal for international investment disputes

A. Preamble²

The Contracting Parties to this Protocol,

Recalling that the increase in international trade and investment has given rise to disputes involving foreign investors and States and that arbitration has often been used to resolve such disputes,

Mindful that concerns have been raised with regard to the high costs and long duration of such arbitral proceedings, lack of diversity among the arbitrators and the lack of coherence, correctness, consistency and predictability of arbitral awards and decisions,

Believing that those concerns should be addressed in a holistic manner through the establishment of a permanent body to handle international investment disputes,

Mindful of the public interest involved in international investment disputes due to the nature of the parties and the subject matters of the disputes,

Noting that the establishment of the [Permanent Tribunal for International Investment Disputes – *name to be determined*] (the “Permanent Tribunal”) would contribute to a fair and efficient settlement of international investment disputes,

Convinced that the Permanent Tribunal would adjudicate disputes in an independent and impartial manner while being effective, affordable, accessible and financially sustainable,

Have agreed as follows:

¹ The draft statute contains language to reflect such cooperation and coordination (for example, articles 4(4), 6(4)(f), 21, 25(2) and 30) ([A/CN.9/1238](#), para. 113). The Working Group may wish to consider including additional articles on cooperation between the Conferences of the Contracting Parties and between the two tribunals, which may also be better reflected in the MIIR.

² [A/CN.9/1167](#), para. 91 and [A/CN.9/1238](#), paras. 96–114.

B. Establishment and governance of the Permanent Tribunal

Article 1 – Establishment and objective³

The Permanent Tribunal is hereby established to resolve international investment disputes.

Article 2 – General principles⁴

1. The Permanent Tribunal shall be independent and free from undue external influence [, including from its donors].
2. The Permanent Tribunal shall handle international investment disputes in a fair, impartial and non-discriminatory manner.
3. The Permanent Tribunal shall operate in a manner that is effective, affordable, accessible and financially sustainable.

Article 3 – Structure and composition⁵

1. The Conference of the Contracting Parties (the “Conference”) shall be composed of all Contracting Parties that have acceded to this Protocol in accordance with article 28.
2. The Permanent Tribunal shall be composed of at least [*number to be determined*] members appointed by the Conference in accordance with Section C.
3. The Registry shall provide the secretariat function to the Conference and the Permanent Tribunal. The Registry shall be headed by a Registrar and composed of staff members.
4. The Permanent Tribunal shall be represented externally by the [President of the Permanent Tribunal] [Chairperson of the Conference].

Article 4 – Conference of the Contracting Parties⁶

1. The Conference shall ensure that the Permanent Tribunal operates and functions in accordance with the general principles set out in article 2.
2. For this purpose, the Conference shall:
 - (a) Elect the members of its Bureau;
 - (b) Fix the number of members of the Permanent Tribunal and make any adjustments;
 - (c) Elect and appoint the members of the Permanent Tribunal in accordance with article 11;
 - (d) [Appoint the Registrar];
 - (e) Adopt its own rules of procedure;
 - (f) Adopt administrative, financial and other regulations on the operation of the Permanent Tribunal;
 - (g) Adopt regulations concerning the criteria to be met by the members of the Permanent Tribunal and the conduct and ethical obligations of the members of the Permanent Tribunal as well as the Registrar and the staff members of the Registry;
 - (h) Evaluate and monitor the activities of the Permanent Tribunal and adopt the annual report prepared by the Registrar;⁷

³ A/CN.9/1238, paras. 115–119.

⁴ A/CN.9/1167, para. 91.

⁵ A/CN.9/1167, para. 92.

⁶ A/CN.9/1167, para. 93.

⁷ See article 6(4)(c).

- (i) Adopt the annual budget of the Permanent Tribunal prepared by the Registrar;⁸
 - (j) Determine the amount of remuneration of the members of the Permanent Tribunal, including any applicable criteria;
 - (k) Determine the amount of financial contribution of each Contracting Party;⁹
 - (l) Adopt the administrative fee structure of the Permanent Tribunal prepared by the Registrar;¹⁰
 - (m) Approve the establishment of any subsidiary bodies of the Permanent Tribunal, including any regional or local offices; and
 - (n) Perform any other functions in accordance with this Protocol.
3. The Conference shall have a Bureau consisting of a Chairperson and [*number to be determined*] Vice-Chairpersons. The Chairperson and the Vice-Chairpersons shall be elected by the Conference for a non-renewable period of [*number to be determined*] years. The Bureau shall meet regularly to assist the Conference in discharging its functions.
 4. The Conference shall meet at least once a year. When considered necessary, or upon the request of [*number to be determined*] Contracting Parties, the Chairperson may convene a special meeting of the Conference[, including with the Conference of the Contracting Parties to the Statute of the Permanent Appellate Tribunal for International Investment Disputes].
 5. The Chairperson shall chair the meetings of the Conference and be responsible for submitting matters for consideration by the Conference. In the absence of the Chairperson, a Vice-Chairperson may exercise the functions of the Chairperson.
 6. The Chairperson may determine who may observe the meetings of the Conference.
 7. The Conference shall endeavour to make all decisions by consensus.
 8. If a decision cannot be made by consensus, the Chairperson may submit the matter to a vote, which requires the presence of a majority of the Contracting Parties. Each Contracting Party shall have one vote. Decisions shall require a four-fifths majority of the Contracting Parties present and voting. If the majority of the Contracting Parties are not present, the same subject matter may be submitted for a vote at the next meeting of the Conference, the decision of which may be made by a four-fifths majority of the Contracting Parties present and voting.

Article 5 – Presidency of the Permanent Tribunal¹¹

1. The President and the Vice-President of the Permanent Tribunal shall be [elected by a majority of votes by the members of the Permanent Tribunal] [selected among the members on a random basis] for a non-renewable period of [*number to be specified*] years. The President and the Vice-President shall rotate among the regional groups.
2. The President and the Vice-President shall constitute the Presidency of the Permanent Tribunal, which shall be responsible for its operation and administration. In the absence of the President, the Vice-President may exercise the functions of President.
3. A member elected to replace the President or the Vice-President before the expiry of the period in paragraph 1 shall serve for [the remainder of the term].

⁸ See article 6(4)(d).

⁹ See article 24.

¹⁰ See article 6(4)(h).

¹¹ A/CN.9/1167, paras. 93–94.

Article 6 – Registry and Registrar¹²

1. The Registry shall carry out administrative and any other functions in accordance with this Protocol. It shall support the activities of the Conference and its subsidiary bodies and assist in the functioning of the Permanent Tribunal and its Presidency.
2. The Registrar shall be the head of the Registry and be appointed by the [Conference] [Permanent Tribunal] for a renewable period of six years, based on a recommendation by the [Bureau of the Conference] [Presidency of the Permanent Tribunal].
3. The Registrar shall be accountable to the [Conference] [Permanent Tribunal].
4. The Registrar shall:
 - (a) Manage the day-to-day operations of the Permanent Tribunal;
 - (b) Employ and manage the staff members of the Registry in accordance with staff regulations adopted by the Conference;
 - (c) Prepare the annual report on the operation of the Permanent Tribunal for adoption by the Conference;
 - (d) Prepare the annual budget of the Permanent Tribunal for adoption by the Conference;
 - (e) Prepare rules of procedure and regulations [applicable to the Registry] for adoption by the Conference;
 - (f) Engage and cooperate, as appropriate, with other organizations and institutions[, including the Registry of the Permanent Appellate Tribunal];
 - (g) Act as registrar for proceedings administered under this Protocol, authenticate decisions rendered by the Permanent Tribunal and certify copies thereof;
 - (h) Prepare the fee structure of the Permanent Tribunal; and
 - (i) Perform any other functions in accordance with this Protocol.
5. The Registrar shall not seek or accept instructions from any government or any authority other than the Permanent Tribunal and shall not hold any other employment or engage in any other occupation without the approval of the [Bureau of the Conference] [Presidency of the Permanent Tribunal].
6. Staff members of the Registry shall not seek or accept instructions from any government or any other authority other than the Permanent Tribunal and shall not hold any other employment or engage in any other occupation without the approval of the Registrar.

C. Members of the Permanent Tribunal**Article 7 – Requirements and qualifications¹³**

1. The members of the Permanent Tribunal shall be independent and impartial and shall be persons of high moral character, enjoying the highest reputation for fairness and integrity with recognized competence in (i) public international law or international investment law and (ii) the resolution of international disputes.
2. The members of the Permanent Tribunal shall also meet any other criteria set forth in the regulations adopted by the Conference.

¹² A/CN.9/1167, para. 95.

¹³ A/CN.9/1194, paras. 15–26.

Article 8 – Nationality¹⁴

No two members of the Permanent Tribunal shall be nationals of the same State.

Article 9 – Nomination of candidates¹⁵

1. A Contracting Party may nominate up to [two] individuals as candidates for appointment as members of the Permanent Tribunal. The candidate need not be a national of a Contracting Party [or the nominating Contracting Party]. In nominating the candidates, the Contracting Party shall take into account gender representation and, as appropriate, make efforts to consult relevant stakeholders, including representatives of the judiciary, civil society organizations, bar associations, business associations and academic institutions.
2. The Conference may carry out an open call for candidates, through which individuals may be nominated as candidates for appointment as members of the Permanent Tribunal. The Conference shall adopt regulations governing the nomination process, including which organizations may nominate candidates.
3. All nominations shall be accompanied by a statement specifying how the candidates fulfil the requirements and qualifications in article 7.
4. Candidates nominated pursuant to this article shall be subject to regulations adopted by the Conference concerning their conduct and ethical obligations and the UNCITRAL Code of Conduct for Judges in International Investment Dispute Resolution.

Article 10 – Screening Committee¹⁶

1. The Conference shall establish a committee (the “Screening Committee”) to review and verify whether the candidates nominated pursuant to article 9 meet the requirements and qualifications in article 7.
2. The Screening Committee shall be composed of [seven] individuals reflecting equitable geographical distribution, representation of the principal legal systems and equal gender representation. The members of the Screening Committee shall be chosen from among former members of the Permanent Tribunal, current or former members of international courts or national supreme courts and lawyers or academics of high standing and recognized competence. The Registrar shall serve *ex officio* in the Screening Committee.
3. The Conference shall adopt regulations on the procedure and operation of the Screening Committee, which (i) set forth the rules on the appointment of Screening Committee members, their qualifications and their terms of service and (ii) outline the procedure to ensure their independence and impartiality.
4. Members of the Screening Committee shall serve in their personal capacity and act independently and in the public interest, and shall not take instructions from any Contracting Party or any other State, organization or person. Members of the Screening Committee may not be appointed as a member of, or serve as counsel or expert before, the Permanent Tribunal during their term and for a period of [*a period of time to be specified*] years thereafter.
5. Upon review of the list of candidates, the Screening Committee may recommend to the Conference that an open call be made for additional candidates in accordance with article 9, paragraph 2. The recommendation shall state the reasons for which it is made.
6. The Screening Committee shall present the final list of suitable candidates to the Conference for its consideration. The list shall be made publicly available. The

¹⁴ A/CN.9/1194, paras. 27–33.

¹⁵ A/CN.9/1194, paras. 34–48.

¹⁶ A/CN.9/1194, paras. 49–56 and A/CN.9/1195, paras. 72–78.

list shall classify the candidates by gender and by regional groups based on their nationality. In the case that a candidate was nominated by a Contracting Party of which that candidate is not a national, the regional group to which the nominating Contracting Party belongs shall also be indicated.

Article 11 – Elections of members of the Permanent Tribunal and appointment by the Conference of the Contracting Parties¹⁷

1. The Conference shall appoint the members of the Permanent Tribunal, the composition of which shall reflect, among others, equitable geographical distribution, representation of the principal legal systems and equal gender representation.
2. The members of the Permanent Tribunal shall be elected at a meeting of the Conference in the case of the first election, and by a procedure agreed to by the Conference for subsequent elections. A simple majority of the Contracting Parties shall constitute a quorum for the elections.
3. The members of the Permanent Tribunal shall be elected from the final list of suitable candidates presented by the Screening Committee in accordance with article 10, paragraph 6.
4. For the purposes of the elections:
 - (a) Subject to article 29, each Contracting Party shall have one vote for each vacancy;
 - (b) Candidates elected as members of the Permanent Tribunal shall be those who obtain the highest number of votes within each regional group and a two-thirds majority of the Contracting Parties present and voting, provided that such majority includes a majority of the Contracting Parties;
 - (c) In the event that a sufficient number of members are not elected on the first ballot to fill the vacancies of a regional group, successive ballots shall be held until the remaining seats of that regional group have been filled; and
 - (d) The members of the Permanent Tribunal shall be elected by secret ballot.

Article 12 – Term and conditions of appointment¹⁸

1. Members of the Permanent Tribunal shall hold office for a term of [nine] years. At the first election to appoint the members of the Permanent Tribunal, half of the appointed members shall be selected by lot to serve for a term of [six] years.
2. Members of the Permanent Tribunal shall not be eligible for reappointment.
3. A member of the Permanent Tribunal assigned to a dispute for which the proceeding has commenced shall continue to discharge the duties to complete the proceeding, unless he or she has resigned or has been removed in accordance with article 13.
4. Members of the Permanent Tribunal shall be subject to the regulations adopted by the Conference concerning their conduct and ethical obligations, and the UNCITRAL Code of Conduct for Judges in International Investment Dispute Resolution.
5. Members of the Permanent Tribunal shall receive a salary. In addition, the President and the Vice-President shall receive a special allowance. The salaries, allowances and other compensation shall be fixed by the Conference.

¹⁷ A/CN.9/1194, paras. 18–19 and 27–33 and A/CN.9/1195, paras. 79–88.

¹⁸ A/CN.9/1195, paras. 89–100.

Article 13 – Removal, resignation, vacancies and replacement¹⁹

1. A member of the Permanent Tribunal may be removed from office in the following circumstances:

- (a) Serious breach of this Protocol;
- (b) Failure to perform his or her duties; or
- [(c) De jure or de facto impossibility to perform his or her functions].

2. In the circumstances listed in paragraph 1, the President of the Permanent Tribunal (in the case of the President, the Vice-President) shall recommend the removal of that member stating the reasons thereof. The member shall be removed by a three-fourths majority vote of the members of the Permanent Tribunal, excluding the member under scrutiny. The removal shall take effect upon the notification to the Conference.

3. A member of the Permanent Tribunal may resign from office by notifying the President (in the case of the President, by notifying the Vice-President). The resignation shall take effect upon the acceptance by the President (or the Vice-President).

4. A member of the Permanent Tribunal who has been removed in accordance with paragraph 2 or who has resigned in accordance with paragraph 3 [or whose seat has otherwise been vacated] shall be replaced in accordance with articles 9 to 11 or pursuant to a procedure adopted by the Conference.

5. A member of the Permanent Tribunal appointed to replace a member in accordance with paragraph 4 shall hold the office [for a term of [nine] years and shall not be eligible for reappointment] [for the remainder of the term and may be eligible for reappointment].

D. Jurisdiction of the Permanent Tribunal**Article 14 – Jurisdiction²⁰**

1. The jurisdiction of the Permanent Tribunal shall extend to any international investment dispute, with respect to which the parties to the dispute have consented in writing to submit to the Permanent Tribunal. When all of the disputing parties have given their consent, no disputing party may withdraw its consent unilaterally.

2. The Permanent Tribunal shall have exclusive jurisdiction over an international investment dispute, when both or all relevant Contracting Parties have consented in writing to the exclusion of any other remedy[, including through the mechanism provided in the MIIR].²¹

¹⁹ A/CN.9/1195, paras. 101–110.

²⁰ A/CN.9/1238, paras. 115–131 and A/CN.9/1167, paras. 96–101.

²¹ The secretariat was requested to provide different options on how Parties to the respective statutes could expressly consent to the exclusive jurisdiction of a standing mechanism, including: (i) automatic exclusivity of listed treaties; (ii) opt-in via listing the treaties and indication of exclusive jurisdiction; and (iii) opt-out in respect of listed treaties (A/CN.9/1238, paras. 130–131). These options will be developed and presented in the MIIR as to existing investment treaties. For example, when a State becomes a party to the MIIR and this Protocol, a subsequent notification by that State listing investment treaties could be formulated as consent to the exclusive jurisdiction of the Permanent Tribunal (option i) with the possibility of that State to make reservations (option iii). Alternatively, States may be required to indicate whether they consent to the exclusive jurisdiction of the Permanent Tribunal in the notification and possibly with respect to each of the treaties listed therein (option ii).

E. Conduct of the proceedings

Article 15 – Request for dispute resolution²²

1. Any party wishing to initiate a proceeding before the Permanent Tribunal shall address a request to that effect to the Registrar [and to the other disputing party][, who shall send a copy of that request to the other disputing party].
2. The request shall contain a brief description of the dispute, the issues in dispute, an indication of the amount involved, the identity of the disputing parties including the contact details and, where relevant, information about their consent to the jurisdiction of the Permanent Tribunal, in accordance with the rules of procedure adopted by the Conference. Following receipt of the request, the Registrar may require the requesting party to supplement the information provided therein or to provide additional information[, including confirmation that any requirement for the submission of a claim in the underlying instrument was met].
3. The Registrar shall register the request unless, on the basis of the information contained in the request or provided thereafter in accordance with paragraph 2, it is found that the dispute is manifestly outside the jurisdiction of the Permanent Tribunal.
4. The Registrar shall promptly notify the parties of the registration or refusal to register, which shall be without prejudice for the parties to make a new request.

Article 16 – Panels and the assignment of disputes²³

1. As soon as possible after the appointment of the members of the Permanent Tribunal and the election of the President and the Vice-President, the Presidency shall assign the members of the Permanent Tribunal to Panels, each consisting of [three] members. The President and the Vice-President shall also be assigned to a Panel.
2. The Presidency shall ensure the effective functioning of the Panels. In composing the Panels, the Presidency may take into account elements referred to in article 11, paragraph 1, as well as areas of expertise, language proficiency, caseload of each member and other relevant criteria as set out in the regulations adopted by the Conference pursuant to article 7, paragraph 2.
3. When a request is registered in accordance with article 15, paragraph 3, the Presidency shall assign the dispute to a Panel on a random basis. If a dispute is assigned to a Panel including a member who is a national of the State party to the dispute or of the State whose national is a party to the dispute, the Presidency shall replace that member with another member of the Permanent Tribunal or assign the dispute to another Panel.
4. [Notwithstanding the first sentence of paragraph 3,] the Presidency may decide to assign two or more disputes to the same Panel, when the issues in the disputes are similar.
5. In the circumstances outlined in the regulations adopted by the Conference, the Presidency may decide to assign a dispute to a Panel consisting of [a sole member] [more than [three] members], provided that the number of members remains odd.
6. In the circumstances outlined in the regulations adopted by the Conference and upon the joint request by the disputing parties, the Presidency may appoint an individual or individuals as additional member(s) of the Panel for that specific dispute. Such individuals shall meet the requirements and qualifications in article 7 and be chosen from the list of suitable candidates prepared by the Screening Committee.

²² A/CN.9/1167, para. 102.

²³ A/CN.9/1167, paras. 103–110.

Article 17 – Disqualification and excusal²⁴

1. A member of a Panel may be disqualified if circumstances exist that give rise to justifiable doubts as to that member's impartiality or independence:

[Where the member has previously been involved in the dispute in any capacity prior to his or her appointment as a member of the Permanent Tribunal (for example, as a legal representative or an expert witness)];

[Where the member has represented any of the disputing parties in any capacity prior to his or her appointment as a member of the Permanent Tribunal];

[Where handling the dispute may lead to a breach of the regulations adopted by the Conference concerning the conduct and ethical obligations of members of the Permanent Tribunal and the UNCITRAL Code of Conduct for Judges in International Investment Dispute Resolution].

2. A disputing party may [challenge] [propose the disqualification of] a member of a Panel based on the grounds listed in paragraph 1. The [challenge] [proposal] shall be submitted to the Presidency.

3. A member of a Panel may request to the Presidency that he or she be excused from the Panel [when ...].

4. The Presidency shall make a determination on the [challenge] [proposal of disqualification] and the request for excusal in accordance with the rules of procedure. A member of a Panel who has been disqualified or excused shall be replaced by another member of the Permanent Tribunal.

Article 18 – Objections to jurisdiction²⁵

1. The Permanent Tribunal shall be the judge of its own jurisdiction.

2. Any objection by a disputing party that the dispute is not within the jurisdiction of the Permanent Tribunal shall be considered by the Panel assigned to the dispute.

Article 19 – Conduct of the Panel proceedings

1. The Panel shall conduct the proceedings in accordance with this Protocol and the rules of procedure adopted by the [Conference] [Permanent Tribunal].

2. Subject to paragraph 1, the Panel may conduct the proceedings in such manner as it considers appropriate, provided that the disputing parties are treated with equality and that at an appropriate stage of the proceedings, each disputing party is given a reasonable opportunity of presenting its case. The Panel shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the dispute.

3. The Panel shall decide a dispute in accordance with the rules of law designated by the disputing parties as applicable to the substance of the dispute. Failing such designation by the disputing parties, the Panel shall apply the law which it determines to be appropriate. Any joint interpretation by the Contracting Parties of the applicable law or instrument shall be binding on the Panel.

4. The UNCITRAL Rules of Transparency in Treaty-based Investor-State Arbitration shall apply mutatis mutandis to the proceedings.

5. At any stage of the proceedings, the Panel may provide guidance to the disputing parties on the potential benefits of mediation as a means of resolving the dispute.

²⁴ A/CN.9/1195, para. 106; A/CN.9/1167, para. 106.

²⁵ A/CN.9/1195, paras. 120–121; A/CN.9/1167, para. 111.

Article 20 – Decision by the Panel²⁶

1. A decision of the Panel shall be made by a majority of the members.
2. Questions of procedure may be decided by the presiding member of the Panel in accordance with the rules of procedure adopted by the [Conference] [Permanent Tribunal].
3. The decision of the Panel shall [be made in writing and shall] be signed by the members of the Panel.
4. The decision of the Panel shall state the reasons upon which it is based.
5. The decision of the Panel shall be considered as rendered by the Permanent Tribunal.
6. The Registrar shall communicate the certified copies of the decision to the disputing parties and shall also make the decision available to the public.
7. Within [*a period of time to be specified*] days of the communication of the decision by the Panel, a party may make a request to the Registrar that the Panel: (i) give an interpretation of the decision; (ii) correct any error in computation, any clerical or typographical errors or any error or omission of a similar nature; or (iii) make an additional decision as to issues presented in the proceedings but not decided by the Panel. The Registrar shall notify the other disputing party and if the request is justified, the Panel shall make an interpretation, correction or additional decision within [*a period of time to be specified*] days, which shall form part of the decision of the Panel.

Article 21 – Appeal to the Permanent Appellate Tribunal as exclusive recourse against a decision by the Permanent Tribunal²⁷

Subject to article 20, paragraph 7, a decision by the Permanent Tribunal shall not be subject to any review other than an appeal to the Permanent Appellate Tribunal, the request for which shall be made within 120 days from the date of the decision.²⁸

Article 22 – Effect of the decision²⁹

1. After the lapse of the period of time for appeal in article 21, the decision of the Permanent Tribunal shall be final and binding on the disputing parties.
2. Each disputing party shall comply with the terms of the decision without delay.

Article 23 – Recognition and enforcement³⁰

1. Each Contracting Party shall recognize a decision by the Permanent Tribunal as binding and enforce the obligations imposed by that decision within its territories as if it were a final judgment of a court in that Contracting Party. A Contracting Party with a federal constitution may choose to enforce such a decision in or through its federal courts and may provide that such courts shall treat the decision as if it were a final judgment of the courts of a constituent state.

²⁶ A/CN.9/1196/Add.1, para. 50.

²⁷ A/CN.9/1238, paras. 98–131.

²⁸ See article 15(3) of the draft statute of the Permanent Appellate Tribunal. The Working Group may wish to consider whether it would be necessary to clarify that a decision by the Permanent Tribunal prior to the lapse of the 120 days or subject to an appeal would not be recognized and enforced under article 23 (see article 23 of the draft statute of the Permanent Appellate Tribunal). The Working Group may wish to further consider the consequence of the different types of decisions that could be made by the Permanent Appellate Tribunal (particularly those that reverse the decision with remand or resubmission to the Permanent Tribunal) on how articles 15 to 20 would operate as the two bodies are to operate separately.

²⁹ A/CN.9/1238, paras. 83–84; A/CN.9/1167, para. 99.

³⁰ A/CN.9/1238, paras. 93–94. See also A/CN.9/WG.III/WP.256, paras. 36–39.

2. A party seeking recognition or enforcement in the territory of a Contracting Party shall supply to a competent court or other authority, which that Contracting Party shall have designated for this purpose, a copy of the decision certified by the Registrar in accordance with article 20, paragraph 7.
3. For the avoidance of doubt and for the purposes of recognition and enforcement in the territory of a non-Contracting Party, a decision by the Permanent Tribunal shall be treated as an “arbitral award” as defined in article I of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
4. Recognition and enforcement may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent court or authority where the recognition and enforcement is sought, proof that: [*grounds to be listed and the procedure to be detailed*].
5. Execution of a decision shall be governed by the laws concerning execution in the Contracting Party in whose territory such execution is sought.

F. Operation of the Permanent Tribunal

Article 24 – Financing

1. The operation of the Permanent Tribunal shall be funded by initial and annual contributions of the Contracting Parties, the fees for services provided by the Permanent Tribunal and voluntary contributions.
2. Each Contracting Party shall make financial contributions in accordance with the regulations adopted by the Conference. If a Contracting Party is in default of its contributions, the Conference may decide to limit or modify its rights or obligations in accordance with the criteria established in the regulations adopted by the Conference.
3. The Permanent Tribunal shall charge fees for its services in accordance with the regulations adopted by the Conference.
4. The Permanent Tribunal may receive voluntary contributions, whether monetary or in-kind, from Contracting Parties, non-Contracting Parties, international and regional organizations, and other persons or entities in accordance with the regulations adopted by the Conference, provided that the receipt of such contribution is consistent with the objectives of the Permanent Tribunal, is reported in the annual report, and does not create a conflict of interest or otherwise impede its independent operation.
5. The budget and expenditure of the Permanent Tribunal shall be subject to internal and external audit.

Article 25 – Legal status and liability

1. The Permanent Tribunal shall have full legal personality. The legal capacity of the Permanent Tribunal shall include the capacity to contract, to acquire and dispose of immovable and movable property, and to institute legal proceedings.
2. The Permanent Tribunal shall be headquartered in [...] based on a host country agreement with [...]. The Permanent Tribunal may be hosted at the place where the Permanent Appellate Tribunal is hosted.
3. The Permanent Tribunal shall enjoy in the territories of each Contracting Party the privileges and immunities as necessary for the fulfilment of its functions.
4. The Permanent Tribunal, its property and assets shall enjoy immunity from all legal processes, except when the Permanent Tribunal waives this immunity.
5. The Permanent Tribunal, its property, assets and income, and its operations and transactions authorized by this Protocol shall be exempt from all taxation and customs

duties. The Permanent Tribunal shall also be exempt from liability for the collection or payment of any taxes or customs duties.

6. The members of the Bureau, the members of the Permanent Tribunal, the Registrar and the staff members of the Registry, when engaged in the functions of the Permanent Tribunal and as may be necessary for the exercise of their functions, shall be accorded the same level of privileges and immunities that is accorded to the staff members of permanent diplomatic missions or international organizations.

7. Paragraph 6 shall also apply to persons appearing in proceedings of the Permanent Tribunal as parties, agents, legal representatives, witnesses or experts, as is necessary for the proper functioning of the Permanent Tribunal and insofar as in connection with their travel to and from, and their stay at, the place of the proceedings.

G. Final clauses

Article 26 – Reservations

1. A Contracting Party may declare that:

(a) The consent to the jurisdiction of the Permanent Tribunal shall apply only when the other disputing party is a national of a Contracting Party or a Contracting Party;

(b) Article 23 shall only apply to decisions involving a national of another Contracting Party or another Contracting Party and on the basis of reciprocity with regard to decisions involving a national of a non-Contracting Party or a non-Contracting Party;

(c) Article 21 shall not apply;

(d) [...].

2. No reservations are permitted except those expressly authorized in this article.

Article 27 – Depositary

The [*to be identified*] is designated as the depositary of this Protocol.

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

1. This Protocol is open for signature by a State or a regional economic integration organization [*place and time to be determined*].

2. This Protocol is subject to ratification, acceptance or approval by the signatories.

3. This Protocol is open for accession by a State or a regional economic integration organization that is not a signatory from the date it is open for signature.

4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 29 – Right to vote³¹

1. Each Contracting Party shall have one vote except as provided for in paragraph 2.

³¹ A/CN.9/1195, para. 80. See articles 23 and 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. The Working Group may wish to consider whether to include a separate article on participation by regional economic integration organizations (see article 8 of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration).

2. A regional economic integration organization that is a Contracting Party shall exercise its right to vote on matters within its competence with a number of votes equal to the number of its member States that are Contracting Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote and vice versa.

Article 30 – Entry into force

This Protocol shall enter into force six months after the date of deposit of the *[number to be determined]* instrument of ratification, acceptance or approval or of accession provided that: *[conditions to be set forth, including possible linkage with the entry into force of the Protocol of the Permanent Appellate Tribunal]*.

Article 31 – Amendments

1. Any Contracting Party may propose an amendment to this Protocol to the Conference. The proposal shall be promptly communicated to all Contracting Parties. The Conference may adopt the amendment, which shall be communicated to the depositary.
2. The depositary shall submit the adopted amendment to all Contracting Parties for ratification, acceptance or approval. The adopted amendment shall enter into force 30 days after the date of deposit of the instrument of ratification, acceptance or approval by all Contracting Parties.

Article 32 – Withdrawal

1. Any Contracting Party may at any time withdraw from this Protocol by means of a formal notification addressed to the depositary. The depositary shall inform the Registrar, who shall inform the Contracting Parties promptly. The withdrawal shall take effect *[a period of time to be specified]* days after the notification is received by the depositary.
 2. The provisions of this Protocol shall apply to the proceedings before the Permanent Tribunal in which the withdrawing Contracting Party or a national of that Contracting Party is a disputing party, if the proceedings have commenced prior to the withdrawal taking effect.
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