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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 appellate tribunal for international investment disputes

Note by the Secretariat

I. Introduction

1. 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

2. Accordingly, this Note contains a draft statute of an appellate standing body (referred to as the “permanent appellate tribunal for international investment disputes”) based on the previous deliberations of the Working Group. A summary of the previous deliberations of the Working Group on a standing mechanism and an appellate mechanism can be found in paragraphs 1 and 2 of document [A/CN.9/WG.III/WP.259](#). Reference to the previous deliberations is also 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.

3. A draft statute of a first-tier standing body (referred to as the “permanent tribunal for international investment disputes”) is contained in document [A/CN.9/WG.III/WP.259](#). Both statutes have been prepared to form protocols to the draft multilateral instrument on ISDS reform (MIIR), without prejudice to any determination on their final form.

¹ The draft statute contains language to reflect such cooperation and coordination (for example, articles 4(4), 6(4)(f), 14(1), 30(2) and 35) ([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.



4. 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 appellate 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 by establishing a permanent body to handle appeals of awards and decisions made with regard to 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 Appellate Tribunal for International Investment Disputes – *name to be determined*] (the “Permanent Appellate Tribunal”) would contribute to a fair and efficient settlement of international investment disputes and provide an adequate mechanism to hear appeals with regard to international investment disputes,

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

Have agreed as follows:

B. Establishment and governance of the Permanent Appellate Tribunal

Article 1 – Establishment and objective³

The Permanent Appellate Tribunal is hereby established to hear appeals with regard to international investment disputes.

Article 2 – General principles⁴

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

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

³ [A/CN.9/1238](#), paras. 115–119.

⁴ [A/CN.9/1167](#), para. 91.

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 33.
2. The Permanent Appellate 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 Appellate Tribunal. The Registry shall be headed by a Registrar and composed of staff members.
4. The Permanent Appellate Tribunal shall be represented externally by the [President of the Permanent Appellate Tribunal] [Chairperson of the Conference].

Article 4 – Conference of the Contracting Parties⁶

1. The Conference shall ensure that the Permanent Appellate 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 Appellate Tribunal and make any adjustments;
 - (c) Elect and appoint the members of the Permanent Appellate 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 Appellate Tribunal;
 - (g) Adopt regulations concerning the criteria to be met by the members of the Permanent Appellate Tribunal and the conduct and ethical obligations of the members of the Permanent Appellate Tribunal as well as the Registrar and the staff members of the Registry;
 - (h) Evaluate and monitor the activities of the Permanent Appellate Tribunal and adopt the annual report prepared by the Registrar;⁷
 - (i) Adopt the annual budget of the Permanent Appellate Tribunal prepared by the Registrar;⁸
 - (j) Determine the amount of remuneration of the members of the Permanent Appellate 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 Appellate Tribunal prepared by the Registrar;¹⁰
 - (m) Approve the establishment of any subsidiary bodies of the Permanent Appellate Tribunal, including any regional or local offices; and
 - (n) Perform any other functions in accordance with this Protocol.

⁵ A/CN.9/1167, para. 92.

⁶ A/CN.9/1167, para. 93.

⁷ See article 6(4)(c).

⁸ See article 6(4)(d).

⁹ See article 29.

¹⁰ See article 6(4)(h).

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 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 Appellate Tribunal¹¹

1. The President and the Vice-President of the Permanent Appellate Tribunal shall be [elected by a majority of votes by the members of the Permanent Appellate 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 Appellate 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].

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 Appellate Tribunal and its Presidency.
2. The Registrar shall be the head of the Registry and be appointed by the [Conference] [Permanent Appellate Tribunal] for a renewable period of six years based on a recommendation by the [Bureau of the Conference] [Presidency of the Permanent Appellate Tribunal].
3. The Registrar shall be accountable to the [Conference] [Permanent Appellate Tribunal].
4. The Registrar shall:

¹¹ A/CN.9/1167, paras. 93–94.

¹² A/CN.9/1167, para. 95.

- (a) Manage the day-to-day operations of the Permanent Appellate 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 Appellate Tribunal for adoption by the Conference;
- (d) Prepare the annual budget of the Permanent Appellate 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 Tribunal];
- (g) Act as registrar for proceedings administered under this Protocol, authenticate decisions rendered by the Permanent Appellate Tribunal and certify copies thereof;
- (h) Prepare the fee structure of the Permanent Appellate 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 Appellate 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 Appellate Tribunal].

6. Staff members of the Registry shall not seek or accept instructions from any government or any other authority other than the Permanent Appellate 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 Appellate Tribunal

Article 7 – Requirements and qualifications¹³

1. The members of the Permanent Appellate 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 Appellate Tribunal shall also meet any other criteria set forth in the regulations adopted by the Conference.

Article 8 – Nationality¹⁴

No two members of the Permanent Appellate 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 Appellate 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.

¹³ A/CN.9/1194, paras. 15–26.

¹⁴ A/CN.9/1194, paras. 27–33.

¹⁵ A/CN.9/1194, paras. 34–48.

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 Appellate 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 Appellate 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 Appellate 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 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 Appellate Tribunal and appointment by the Conference of the Contracting Parties¹⁷

1. The Conference shall appoint the members of the Permanent Appellate 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 Appellate 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

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

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

Conference for subsequent elections. A simple majority of the Contracting Parties shall constitute a quorum for the elections.

3. The members of the Permanent Appellate 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 34, each Contracting Party shall have one vote for each vacancy;

(b) Candidates elected as members of the Permanent Appellate 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 Appellate Tribunal shall be elected by secret ballot.

Article 12 – Term and conditions of appointment¹⁸

1. Members of the Permanent Appellate Tribunal shall hold office for a term of [nine] years. At the first election to appoint the members of the Permanent Appellate Tribunal, half of the appointed members shall be selected by lot to serve for a term of [six] years.

2. Members of the Permanent Appellate Tribunal shall not be eligible for reappointment.

3. A member of the Permanent Appellate Tribunal assigned to an appeal 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 Appellate 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 Appellate 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.

Article 13 – Removal, resignation, vacancies and replacement¹⁹

1. A member of the Permanent Appellate 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 Appellate 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 Appellate Tribunal

¹⁸ A/CN.9/1195, paras. 89–100.

¹⁹ A/CN.9/1195, paras. 101–110.

excluding the member under scrutiny. The removal shall take effect upon the notification to the Conference.

3. A member of the Permanent Appellate 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 Appellate 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 Appellate 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 Appellate Tribunal

Article 14 – Jurisdiction²⁰

1. The jurisdiction of the Permanent Appellate Tribunal shall extend to appeals of an award rendered by an arbitral tribunal or a decision of an adjudicatory body, including the Permanent Tribunal, with regard to an international investment dispute (hereinafter referred to as an “award or decision” of a “first-tier tribunal”), with respect to which the parties to the dispute have consented in writing to submit to the Permanent Appellate Tribunal. When all of the disputing parties have given their consent, no disputing party may withdraw its consent unilaterally.

2. The consent of the disputing parties may be provided at any time, including prior to submitting a dispute to an arbitral tribunal or an adjudicatory body.

3. The Permanent Appellate Tribunal shall have exclusive jurisdiction over appeals of an award or a decision of a first-tier tribunal with regard to 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

E. Conduct of the appellate proceedings

Article 15 – Request for appeal²²

1. Any party wishing to institute an appellate proceeding before the Permanent Appellate Tribunal shall address a request to that effect to the Registrar, who shall send a copy of that request to the other disputing party.

2. The request shall contain information concerning the award or decision being appealed, the identity of the disputing parties including the contact details,

²⁰ [A/CN.9/1238](#), paras. 115–131.

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 notification by that State listing investment treaties subject to the Protocol could be formulated as automatic consent to the exclusive jurisdiction of the Permanent Appellate Tribunal (option i) with the possibility of that State to make reservations with regard to certain treaties (option iii). Alternatively, States may be required to indicate whether they consent to the exclusive jurisdiction of the Permanent Appellate Tribunal in the notification and possibly with respect to each of the treaties listed therein (option ii).

²² [A/CN.9/1195](#), paras. 112–116 and [A/CN.9/1196/Add.1](#), paras. 9–19.

information about their consent to the jurisdiction of the Permanent Appellate Tribunal where relevant, and the ground(s) of appeal, 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.

3. The request in paragraph 1 shall be made within 120 days from the date of the award or decision of the first-tier tribunal that is the subject of appeal. After the lapse of that period of time, the award or decision shall no longer be subject to appeal.
4. 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 appeal is manifestly outside the jurisdiction of the Permanent Appellate Tribunal.
5. 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 – Chambers and the assignment of appeals²³

1. When a request is registered in accordance with article 15, paragraph 4, the Presidency shall constitute a Chamber to hear the appeal. The Chamber shall consist of [three] members of the Permanent Appellate Tribunal chosen [on a random basis].²⁴ The President and the Vice-President may be assigned to a Chamber.
2. A member of the Permanent Appellate Tribunal, who is a national of the State party to the appeal or of the State whose national is a party to the appeal, may not serve in the Chamber assigned to hear the appeal.
3. The Presidency shall ensure the effective functioning of the Chambers. [In composing the Chambers, 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 to ensure the effective functioning of the Chamber.]
4. The Presidency may decide to assign subsequent appeal(s) to the same Chamber, when the issues of the appeals are similar.
5. In the circumstances outlined in the regulations adopted by the Conference, the Presidency may decide to assign an appeal to a Chamber consisting of more than [three] members, provided that the number of members remains odd.

Article 17 – Disqualification and excusal²⁵

1. A member of a Chamber 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 Appellate 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 Appellate Tribunal];

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

²³ A/CN.9/1195, paras. 117–119 and A/CN.9/1167, paras. 103–110.

²⁴ The square-bracketed phrase should be read in conjunction with the second sentence of paragraph 3 as both relate to how a Chamber should be composed either on a random basis or based on the discretion of the Presidency.

²⁵ A/CN.9/1195, para. 106 and A/CN.9/1167, para. 106.

2. A disputing party may [challenge] [propose the disqualification of] a member of a Chamber based on the grounds listed in paragraph 1. The [challenge] [proposal] shall be submitted to the Presidency.
3. A member of a Chamber may request to the Presidency that he or she be excused from the Chamber [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 Chamber who has been disqualified or excused shall be replaced by another member of the Permanent Appellate Tribunal.

Article 18 – Scope of appeal²⁶

1. An appeal may be requested only with regard to a final award or decision of the first-tier tribunal concerning its jurisdiction or on the merits.
2. A final award or decision means an award or decision that has disposed of the issues or questions in dispute.
3. Notwithstanding paragraph 1, an appeal may be requested with regard to a [determination] [ruling] by the first-tier tribunal, which:
 - [(a) Confirms its jurisdiction;
 - (b) Relates to the constitution of the first-tier tribunal;
 - (c) Relates to challenges or disqualification of arbitrators or members of the first-tier tribunal;
 - (d) Orders a disputing party to provide security for costs;
 - (e) Grants interim measures to preserve a party's right];
 - (f) [...].

Article 19 – Conditions for appeal²⁷

Alternative A: Waiver of the right to pursue other remedies as a condition for appeal

An appeal may be requested only if the requesting party expressly waives any right it has to initiate annulment, set aside, recognition or enforcement proceedings with regard to the award or decision of the first-tier tribunal [during the appellate proceeding].

Alternative B: Automatic exclusion of other remedies

Where an award or decision of the first-tier tribunal is subject to appeal in accordance with article 14, it shall not be subject to any remedy (including annulment, set aside or other review before any forums) other than those set out in this Protocol.

Article 20 – Grounds of appeal²⁸

A party may request an appeal on the ground that:

- (a) The first-tier tribunal made an error in the application or interpretation of the law;
- (b) The first-tier tribunal made [a manifest error] [an error apparent on its face] in the assessment of the facts;
- (c) A member of the first-tier tribunal lacked impartiality or independence or was improperly appointed, or the first-tier tribunal was improperly constituted;

²⁶ A/CN.9/1196/Add.1, paras. 9–19 and A/CN.9/1130, paras. 125–135.

²⁷ A/CN.9/1195, paras. 113 and A/CN.9/1196/Add.1, paras. 20–25.

²⁸ A/CN.9/1196/Add.1, paras. 26–35 and A/CN.9/1130, paras. 136–148.

- (d) The first-tier tribunal ruled beyond the claims submitted to it;
 - (e) There has been a serious departure from a fundamental rule of procedure;
- or
- (f) The award or decision of the first-tier tribunal failed to state the reasons on which it is based, unless the disputing parties have agreed otherwise.

Article 21 – Objections by disputing parties²⁹

1. The Permanent Appellate Tribunal shall be the judge of its own jurisdiction.
2. Any objection by a disputing party that the appeal (i) is not within the jurisdiction of the Permanent Appellate Tribunal or (ii) does not meet the requirements in articles 18, [19] and 20, shall be considered by the Chamber assigned to the appeal.

Article 22 – Effect of an appeal on ongoing first-tier tribunal proceeding³⁰

When a request for appeal is registered in accordance with article 15, paragraph 4, and upon the request by a disputing party, the first-tier tribunal [shall] [may] suspend its proceedings until a decision is made by the Chamber, including a decision to terminate the appellate proceedings.

Article 23 – Effect of an appeal on proceedings for annulment, set aside, recognition and enforcement of the award or decision subject of appeal³¹

1. When the request for appeal is registered in accordance with article 15, paragraph 4, the award or decision of the first-tier tribunal subject of appeal shall not be final and binding and shall not be subject to annulment, set aside, recognition, enforcement or any other remedy.
2. A party may request the stay of the annulment, set aside, recognition, enforcement or any such proceeding until a decision is made by the Chamber, including a decision to terminate the appellate proceedings.

Article 24 – Conduct of the Chamber proceedings³²

1. The Chamber shall conduct the proceedings in accordance with this Protocol and the rules of procedure adopted by the [Conference] [Permanent Appellate Tribunal].
2. Subject to paragraph 1, the Chamber 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 Chamber 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. Any joint interpretation by the Contracting Parties of the applicable law or instrument shall be binding on the Chamber.
4. The UNCITRAL Rules of Transparency in Treaty-based Investor-State Arbitration shall apply mutatis mutandis to the appellate proceedings.
5. At any stage of the proceedings, the Chamber may provide guidance to the disputing parties on the potential benefits of mediation as a means of resolving the dispute.

²⁹ A/CN.9/1195, paras. 120–121 and A/CN.9/1167, para. 111.

³⁰ A/CN.9/1196/Add.1, paras. 36–41.

³¹ A/CN.9/1196/Add.1, para. 42.

³² A/CN.9/1196/Add.1, paras. 43–46.

Article 25 – Decision by the Chamber³³

1. A decision of the Chamber shall be made by a majority of the members.
2. Questions of procedure may be decided by the presiding member of the Chamber in accordance with the rules of procedure adopted by the [Conference] [Permanent Appellate Tribunal].

Types of decisions

3. The Chamber may uphold, modify or reverse the award or decision of the first-tier tribunal in whole or in part, including its findings.

Modification without remand

4. If the Chamber does not uphold the award or decision, it shall as far as possible modify the award or decision on the basis of the facts before the first-tier tribunal or, if the Chamber deems it necessary and appropriate, through its own fact-finding.

Reversal with remand to the first-tier tribunal

5. If the Chamber does not uphold the award or decision and is unable to modify it in accordance with paragraph 4, it shall reverse it and remand the dispute to the first-tier tribunal with instructions.
6. In that case, the dispute shall, if possible, be remanded to the first-tier tribunal which rendered the award or decision. If one or more members of the original first-tier tribunal are no longer willing, available, or otherwise able to serve, any such member shall be replaced by a new member appointed in accordance with the rules applicable to the constitution of the first-tier tribunal.

Reversal with resubmission to a new tribunal

7. If the Chamber determines that a remand pursuant to paragraph 5 would be inappropriate, the dispute shall be resubmitted, at the request of either disputing party, to a new [first-instance] tribunal constituted in accordance with the rules applicable to the constitution of the first-tier tribunal.
8. If the Chamber reverses the award or decision on the basis of article 20, subparagraph (c), the dispute shall in any event be resubmitted, at the request of either disputing party, to a new [first-instance] tribunal constituted in accordance with the rules applicable to the constitution of the first-tier tribunal.

Period of time for making the decision

9. The Chamber shall make a decision under paragraph 3 within [180] days from the date of the last submission by the disputing parties. When the Chamber is unable to make a decision within that period, it shall inform the disputing parties in writing of the reasons for the delay and indicate a fixed period of time within which it will make its decision [, which shall not exceed [a period of time to be specified] days].

Form and contents of the decision

10. The decision of the Chamber shall [be made in writing and shall] be signed by the members of the Chamber.
11. The decision of the Chamber shall state the reasons upon which it is based.

Publication and others

12. The decision of the Chamber shall be considered as rendered by the Permanent Appellate Tribunal.

³³ A/CN.9/1196/Add.1, paras. 47–65.

13. The Registrar shall communicate certified copies of the decision to the disputing parties and shall also make it available to the public.

Interpretation, correction and additional decision

14. Within [a period of time to be specified] days of the communication of the decision by the Chamber, a disputing party may make a request the Registrar that the Chamber: (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 Chamber. The Registrar shall notify the other disputing party and if the request is justified, the Chamber 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 Chamber.

Article 26 – Effect of a decision by the Permanent Appellate Tribunal³⁴

Decision upholding an award or decision of the first-tier tribunal

1. An award or decision of the first-tier tribunal upheld by the Permanent Appellate Tribunal shall be final and binding on the disputing parties.

Modification without remand

2. An award or decision of the first-tier tribunal modified by the Permanent Appellate Tribunal shall be final and binding on the disputing parties as modified.

Reversal with remand to the first-tier tribunal

3. An award or decision of the first-tier tribunal which was reversed in whole with remand by the Permanent Appellate Tribunal in accordance with article 25, paragraphs 5, shall have no effect.

4. Any part of an award or decision of the first-tier tribunal which was reversed with remand by the Permanent Appellate Tribunal in accordance with article 25, paragraphs 5, shall have no effect. The remaining part of the award or decision [which was not reversed] shall be binding on the disputing parties.

Reversal with resubmission to a new tribunal

5. An award or decision of the first-tier tribunal reversed by the Permanent Appellate Tribunal in accordance with article 25, paragraphs 7 and 8, shall have no effect.

Appeal of an award or decision made by the first-tier tribunal upon remand or made by a new tribunal

6. An award or decision made by the first-tier tribunal upon remand shall be subject to appeal on the ground that the first-tier tribunal on remand did not comply with the instructions of the Chamber and, for any new matters arising as a result of the remand that were not subject to the first appeal, on all grounds under article 20.

7. An award or decision made by a new tribunal in accordance with article 25, paragraphs 7 and 8, shall be the subject of appeal on all grounds under article 20.

Article 27 – Recourse against a decision by the Permanent Appellate Tribunal

A decision by the Permanent Appellate Tribunal shall not be subject to appeal or any other recourse.

³⁴ A/CN.9/1238, paras. 82–95.

Article 28 – Recognition and enforcement³⁵

1. Each Contracting Party shall recognize a decision by the Permanent Appellate 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.
2. For the purposes of paragraph 1:
 - (a) An award or decision of the first-tier tribunal upheld by the Permanent Appellate Tribunal shall be considered as rendered by the Permanent Appellate Tribunal;
 - (b) An award or decision of the first-tier tribunal modified by the Permanent Appellate Tribunal shall be considered as rendered by the Permanent Appellate Tribunal as modified; and
 - (c) When an award or decision of the first-tier tribunal is reversed in part with remand by the Permanent Appellate Tribunal in accordance with article 25, paragraphs 5, the remaining part the award or decision shall be considered as rendered by the Permanent Appellate Tribunal. That part of the award or decision may only be enforced after the first-tier tribunal makes an award or decision upon remand.
3. A disputing 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 25, paragraph 13.
4. For the avoidance of doubt and for the purposes of recognition and enforcement in the territory of a non-Contracting Party, a decision made by the Permanent Appellate 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.
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 Appellate Tribunal**Article 29 – Financing**

1. The operation of the Permanent Appellate Tribunal shall be funded by initial and annual contributions of the Contracting Parties, the fees for services provided by the Permanent Appellate 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 Appellate Tribunal shall charge fees for its services in accordance with the regulations adopted by the Conference.
4. The Permanent Appellate 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

³⁵ A/CN.9/1238, paras. 93–94. See also A/CN.9/WG.III/WP.256, paras. 36–39. The Working Group may wish to confirm that article 35 need not address the recognition and enforcement of an award or decision made by the first-tier tribunal subsequent to a decision by the Permanent Appellate Tribunal reversing the initial decision with remand or with resubmission in accordance with article 25 (5), (7) and (8), as such an award or decision would be subject to their own recognition and enforcement regime.

with the regulations adopted by the Conference, provided that the receipt of such contribution is consistent with the objectives of the Permanent Appellate 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 Appellate Tribunal shall be subject to internal and external audit.

Article 30 – Legal status and liability

1. The Permanent Appellate Tribunal shall have full legal personality. The legal capacity of the Permanent Appellate Tribunal shall include the capacity to contract, to acquire and dispose of immovable and movable property, and to institute legal proceedings.

2. The Permanent Appellate Tribunal shall be headquartered in [...] based on a host country agreement with [...]. The Permanent Appellate Tribunal may be hosted at the place where the Permanent Tribunal is hosted.

3. The Permanent Appellate 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 Appellate Tribunal, its property and assets shall enjoy immunity from all legal processes, except when the Permanent Appellate Tribunal waives this immunity.

5. The Permanent Appellate 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 Appellate 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 Appellate Tribunal, the Registrar and the staff members of the Registry, when engaged in the functions of the Permanent Appellate 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 Appellate Tribunals as parties, agents, legal representatives, witnesses or experts, as is necessary for the proper functioning of the Permanent Appellate 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 31 – Reservations

1. A Contracting Party may declare that:

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

(b) Article 28 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) It shall not apply the Protocol to arbitrations conducted under the ICSID Convention and awards resulting thereof;

(d) [...].

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

Article 32 – Depositary

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

Article 33 – 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 34 – Right to vote³⁶

1. Each Contracting Party shall have one vote except as provided for in paragraph 2.
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 35 – 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 linkages with the entry into force of the Protocol of the Permanent Tribunal*].

Article 36 – 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 37 – 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.

³⁶ 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. The provisions of this Protocol shall apply to the proceedings before the Permanent Appellate 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.
