



**United Nations Commission on
International Trade Law
Working Group III (Investor-State Dispute
Settlement Reform)
Forty-eighth session
New York, 1–5 April 2024**

Possible reform of investor-State dispute settlement (ISDS)

Draft statute of an advisory centre on international investment dispute resolution

Note by the Secretariat

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I. Introduction

1. The Working Group discussed the establishment of an advisory centre on international investment law at its thirty-eighth session in October 2019 (A/CN.9/1004, paras. 28–50), thirty-ninth session in October 2020 (A/CN.9/1044, paras. 22–26, 34 and 39) and forty-third session in September 2022 (A/CN.9/1124, paras. 42–65).

2. At its forty-sixth session in October 2023, the Working Group completed the first reading of the draft provisions on the establishment of an advisory centre on international investment law as contained in document A/CN.9/WG.III/WP.230 and requested the Secretariat to revise the draft provisions based on the deliberations (A/CN.9/1160, para. 85). At that session, it was widely felt that an advisory centre should be established as an intergovernmental body, which would require the preparation of an international instrument (A/CN.9/1160, para. 17). The Working Group agreed that the establishment of an advisory centre should not be linked with other investor-State dispute settlement (ISDS) reform elements (A/CN.9/1160, para. 17) and that it would recommend to the Commission that the draft provisions should be adopted in principle at its next session in 2024 (A/CN.9/1160, paras. 13 and 18).

3. At its forty-seventh session in January 2024, the Working Group completed its second reading of articles 1 to 8 of the draft statute of an advisory centre as contained in document A/CN.9/WG.III/WP.236 and requested the Secretariat to further revise the draft statute based on the decisions and deliberations of the Working Group and to provide additional information regarding its establishment (A/CN.9/1161, paras. 15–111).

4. Accordingly, this Note contains the revised draft statute of an advisory centre on international investment dispute resolution (hereinafter, the “Advisory Centre” or “Centre”) along with the information requested by the Working Group for its consideration.

II. Draft statute of an advisory centre on international investment dispute resolution

Articles 1 to 8

5. At its forty-seventh session, the Working Group approved the articles 1 to 8 as follows. Minor editorial changes have been made to ensure consistency throughout the text.

Article 1 – Establishment¹

The Advisory Centre on International Investment Dispute Resolution (the “Advisory Centre”) is hereby established.

Article 2 – Objectives²

1. The Advisory Centre aims to provide training, support and assistance with regard to international investment dispute resolution.

2. The Advisory Centre aims to enhance the capacity of States and regional economic integration organizations in preventing and handling international investment disputes, in particular, least developed countries and developing countries.

¹ A/CN.9/1161, para. 16.

² A/CN.9/1161, paras. 17–22.

Article 3 – General principles³

1. The Advisory Centre shall operate in a manner that is effective, affordable, accessible and financially sustainable.
2. The Advisory Centre shall be independent and free from undue external influence, including from its donors.
3. The Advisory Centre shall cooperate with international and regional organizations and coordinate, as appropriate, its activities to ensure the efficient use of its resources.

Article 4 – Membership⁴

1. A State or a regional economic integration organization may become a Member of the Advisory Centre in accordance with article 12.
2. Each Member is entitled to the services of the Advisory Centre and has the obligations as set out in this Protocol and the regulations adopted by the Governing Committee.
3. For the purposes of this Protocol, each Member shall be categorized into [least developed countries] as listed in Annex I, [developing countries] as listed in Annex II and [others] as listed in Annex III. This categorization is without prejudice to classifications in other instruments or other organizations.
4. For the purposes of this Protocol, a “non-Member” refers to a State or a regional economic integration organization that is not a Party to this Protocol.

Article 5 – Structure⁵

1. The Advisory Centre shall consist of a Governing Committee, an Executive Committee and a Secretariat headed by an Executive Director.
2. The Governing Committee shall be composed of representatives of the Members of the Advisory Centre. Each Member shall appoint one representative to the Governing Committee.
3. The Governing Committee shall:
 - (a) Adopt its rules of procedure;
 - (b) Adopt regulations on the operation of the Advisory Centre;
 - (c) Appoint the members of the Executive Committee taking into consideration geographical diversity and gender balance;
 - (d) Assign any other functions to the Executive Committee;
 - (e) Adopt the staff regulations on the conditions of services and rights and obligations of the Executive Director and staff members of the Secretariat;
 - (f) Appoint the Executive Director for a term of four (4) years, who shall be eligible for re-appointment;
 - (g) Evaluate and monitor the performance of the Advisory Centre and adopt the annual report prepared by the Executive Director;
 - (h) Adopt the annual budget of the Advisory Centre prepared by the Executive Director and reviewed by the Executive Committee;

³ A/CN.9/1161, paras. 23–27.

⁴ A/CN.9/1161, paras. 28–41.

⁵ A/CN.9/1161, paras. 42–65.

- (i) Periodically assess and if needed, adjust the scope and type of services of the Advisory Centre, including by deciding to phase in some of the services at a later stage of its operation; and
 - (j) Perform other functions in accordance with this Protocol.
4. The Governing Committee shall meet at least once a year.
5. The Governing Committee shall endeavour to make all decisions by consensus.
6. If a decision cannot be made by consensus, the subject matter may be submitted to a vote, which requires the presence of a majority of the Members. Each Member shall have one vote. Decisions shall require a four-fifths majority of the Members present and voting. If the majority of the Members are not present, the same subject matter may be submitted for a second vote at the next meeting of the Governing Committee, the decision of which may be made by a four-fifths majority of the Members present and voting.
7. The Executive Committee shall consist of six members. The Executive Director shall also serve *ex officio* on the Executive Committee. Each group of Members as listed in Annexes I, II and III shall nominate two members of the Executive Committee for appointment by the Governing Committee. The members of the Executive Committee shall serve in their personal capacity and shall be selected on the basis of their professional qualifications in international investment dispute resolution.
8. The Executive Committee shall report to the Governing Committee. The Executive Committee shall meet as often as necessary and shall:
- (a) Propose for adoption by the Governing Committee rules on the procedure of the Executive Committee;
 - (b) Take decisions necessary to ensure the efficient and effective operation of the Advisory Centre in accordance with this Protocol and the regulations adopted by the Governing Committee;
 - (c) Review the annual budget of the Advisory Centre and submit it for adoption by the Governing Committee;
 - (d) Provide advice to the Executive Director including on the administration of the budget of the Advisory Centre;
 - (e) Appoint the external auditor;
 - (f) Supervise the administration of the Secretariat; and
 - (g) Perform other functions in accordance with the Protocol and as assigned by the Governing Committee.
9. The Executive Director shall:
- (a) Manage the day-to-day operation of the Advisory Centre;
 - (b) Employ and manage the staff members of the Secretariat in accordance with the staff regulations adopted by the Governing Committee;
 - (c) Prepare the annual report on the operation of the Advisory Centre for adoption by the Governing Committee;
 - (d) Prepare the annual budget of the Advisory Centre for review by the Executive Committee; and
 - (e) Represent the Advisory Centre externally.
10. The Executive Director shall be accountable to the Governing Committee.
11. The Executive Director shall not hold any other employment or engage in any other occupation without the approval of the Executive Committee.

Article 6 – Technical assistance and capacity-building⁶

1. The Advisory Centre shall provide technical assistance to its Members and engage in capacity-building activities with regard to international investment dispute resolution, including by:

- (a) Advising on issues pertaining to dispute prevention;
- (b) Providing tailored training with regard to possible means of preventing and resolving disputes;
- (c) Holding seminars and conferences;
- (d) Functioning as a forum for the exchange of information and sharing of best practices;
- (e) Functioning as a repository of information and related resources; and
- (f) Performing any other functions as assigned by the Governing Committee.

2. The Advisory Centre shall cooperate and coordinate with international and regional organizations in accordance with articles 2 and 3. The Advisory Centre may engage other persons or entities in providing the services in paragraph 1.

3. In accordance with the regulations adopted by the Governing Committee, the Executive Director may allow:

(a) Non-Members to participate in the activities organized by the Advisory Centre pursuant to paragraph 1; and

(b) Other persons or entities to participate in the activities pursuant to paragraph 1, subparagraphs (c) to (e). When the Governing Committee assigns any other functions in accordance with paragraph 1, subparagraph (f), it shall also determine the extent to which the Executive Director may allow other persons or entities to participate in those activities.

The regulations shall require the Executive Director to set appropriate fees for such participation, and include criteria for allowing participation, such as whether it contributes to the objectives of the Advisory Centre, whether it creates any conflict of interest and the resource implications on the Advisory Centre.

Article 7 – Legal advice and support with regard to international investment dispute proceedings⁷

1. Upon the request by a Member, the Advisory Centre shall provide legal support and advice with regard to an international investment dispute proceeding prior to and after its initiation, including by:

- (a) Providing a preliminary assessment of the case, including the appropriate means to resolve the dispute;
- (b) Assisting in the selection of mediators, arbitrators or other types of adjudicators (including any challenge) as well as experts, taking into account geographical diversity and gender balance;
- (c) Supporting the preparation of statements, pleadings and evidence as well as other aspects of the proceeding;
- (d) Representing the Member in the proceeding, including in a hearing, at the instruction of and in conjunction with a team of that Member;
- (e) Facilitating the appointment of external legal representative; and
- (f) Performing any other functions as assigned by the Governing Committee.

⁶ A/CN.9/1161, paras. 66–86.

⁷ A/CN.9/1161, paras. 87–95.

2. The provision of services in paragraph 1 is subject to the resources available to the Advisory Centre.

3. In providing the services in paragraph 1, the Advisory Centre shall, in principle, give priority to Members listed in Annex I followed by Members listed in Annex II in accordance with the regulations adopted by the Governing Committee. In the event that requests are received from Members in the same category, priority shall generally be given to the Member that requested the services first.

4. The Executive Director may allow a non-Member to request the services in paragraph 1 in accordance with the regulations adopted by the Governing Committee. Whether the requesting non-Member may benefit from the services and the extent of the services to be provided by the Advisory Centre shall be determined by the Governing Committee. In making the determination, the Governing Committee shall consider whether allowing a non-Member to benefit from the services contributes to the objectives of the Advisory Centre, whether the non-Member is in the process of becoming a Member, whether it creates any conflict of interest and the resource implications on the Advisory Centre.

Article 8 – Financing⁸

1. The operation of the Advisory Centre shall be funded by the contributions of Members, the fees for services provided by the Advisory Centre and voluntary contributions.

2. Each Member shall make financial contributions in accordance with Annex IV. If a Member is in default of its contributions, the Governing Committee may decide to limit or modify its rights or obligations in accordance with the criteria established in the regulations adopted by the Governing Committee.

3. The Advisory Centre shall charge fees for its services [as set forth in Annex V and] in accordance with the regulations adopted by the Governing Committee.

4. The Advisory Centre may receive voluntary contributions, whether monetary or in-kind, from Members, non-Members, international and regional organizations, and other persons or entities in accordance with the regulations adopted by the Governing Committee, provided that the receipt of such contribution is consistent with the objectives of the Advisory Centre, is reported in the annual report, and does not create any conflict of interest or otherwise impede its independent operation.

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

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

Note to the Working Group

6. With regard to article 4(3), the Working Group may wish to note that the nomenclature for the group of States in Annexes I to III was left undetermined (A/CN.9/1161, paras. 39), which should also be considered in conjunction with the references in article 2(2). The Working Group may also wish to note that the second sentence has been added to clarify that the categorization in Annexes I to III was for the purposes of the draft statute only and would be without prejudice to any other classifications (A/CN.9/1161, para. 40).

7. With regard to article 5, a suggestion had been made that article 5 should be split into several articles to enhance readability (A/CN.9/1161, para. 49). However, it has been retained as a single article as it addresses the overall governance structure of the Centre and also because the draft statute is expected to contain only two articles on the services of the Centre.

⁸ A/CN.9/1161, paras. 96–109.

8. With regard to articles 4(3) and 5(3), the Working Group may wish to consider the role of the Governing Committee in making adjustments to the categorization of Members in Annexes I to III (A/CN.9/1161, paras. 36 and 37). As annexes are usually considered to form an integral part of a draft statute, this issue is addressed in article 15 (see paras. 30–32 below).

9. With regard to article 5(8), the Working Group may wish to consider replacing the word “report” with “be accountable to” to align it with article 5(10). With regard to article 5(8)(c), the Working Group may wish to note that the term “approval” was replaced with “adoption” to align with article 5(3)(h). The Working Group may also wish to consider whether the draft statute should contain rules on decision-making by the Executive Committee similar to article 5(5) and (6).

10. The Working Group may wish to consider whether the Advisory Centre should provide services relating to State-to-State dispute settlement (SSDS) (A/CN.9/1161, paras. 73 and 111; A/CN.9/1160, paras. 26–28, 64 and 73) and whether any explicit reference needs to be mentioned in the draft statute. Considering the divergence in views, no reference is made to SSDS in the draft statute, while article 5(3)(i) allows the Governing Committee to adjust the scope and type of services of the Centre at a later stage. In other words, it would be left to the Governing Committee to include or exclude SSDS-related services depending on the circumstances.

11. With regard to article 8(3), the Working Group may wish to consider whether the fee structure of the Centre should be set forth as an annex in light of the need to make adjustments and the fact that the Governing Committee is expected to adopt regulations governing such fees (see paras. 30–32 and 35 below).

Article 9 – Legal status and liability

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

2. The Advisory Centre shall be headquartered in [...] based on a host country agreement with [...].

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

4. The Advisory Centre, its property and assets shall enjoy immunity from all legal process, except when the Advisory Centre waives this immunity.

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

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

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

12. Article 9 addresses the legal status of the Centre with the understanding that it would be established as an intergovernmental organization. It is largely based on articles 18 to 24 of the ICSID Convention.

13. Paragraph 1 addresses the Centre’s legal capacity to function and operate properly (A/CN.9/1160, para. 81). Paragraph 2 addresses the location of the Centre and the need to conclude a host country agreement. As to a suitable location for the Centre, a number of elements should be taken into account, such as the accessibility

for the beneficiaries of the services and the overall efficiency in providing services, including remotely (A/CN.9/1161, para. 110; A/CN.9/1160, para. 84). The willingness of the host State to financially contribute to the establishment and operation of the Centre should also be a factor. The setting up of regional offices can also be foreseen, which would broaden the scope of coverage but would require additional financial resources.

14. Paragraphs 3 to 5 address the privileges and immunities necessary of the Centre to protect its integrity and independence. Paragraph 4 protects the Centre and its assets (mainly the financial assets in the trust funds) from claims against it, including possibly those based on legal advice and support provided by the Centre in accordance with article 7. Similarly, paragraph 6 addresses the functional immunity of the Executive Director and the staff members of the Secretariat to shield them from external pressures that might hinder the provision of services. Without such immunity, the Centre may need to obtain a professional insurance policy for its staff members, which may put a heavy burden on the budget of the Centre. This, however, does not mean that the Executive Director and the staff members of the Secretariat would not be held accountable for their conduct, which would be regulated in the staff regulations adopted by the Governing Committee.

15. It is foreseen that the Centre may provide services to non-Members, other parties or entities (see articles 6(3) and 7(4)), which are not bound by the statute nor the host country agreement. In that case, the Centre would need to ensure that the same level of privileges and immunities are granted to the Centre, for example, by concluding an agreement with the non-Member or requiring them to waive their rights to raise any claim against the Centre and its staff members for the services obtained.

Means of establishment including under the auspices of the United Nations

16. There are a number of ways to establish the Advisory Centre, including as part of the United Nations system (a list of organizations under the United Nations system is available at www.un.org/en/about-us/un-system). It is, of course, possible to establish the Advisory Centre without any affiliation with the United Nations, which would have the benefit of ensuring full independence of its operations (also in terms of budget) and flexibility to adjust to the changing circumstances (for example, the Permanent Court of Arbitration and the Advisory Centre on WTO Law).

17. However, there may be certain advantages of establishing the Advisory Centre within the United Nations system. It could increase the visibility of the Centre and the capacity to garner attention and support for its objectives and activities, including through voluntary contributions. It may also facilitate the cooperation and coordination (including reciprocal representation) envisaged under article 3(3), particularly with other organizations in the United Nations system, such as United Nations Commission on International Trade Law, United Nations Conference on Trade and Development, the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States and the World Bank Group (in particular, International Centre for Settlement of Investment Disputes). Lastly, it would be possible to benefit from established frameworks and existing rules and regulations – for example, those applicable to the immunities and privileges (see paras. 14–15 above), staff and financial regulations (including on internal and external audit). In that context, some of the articles in the draft statute may need to be adjusted if the Centre were to be established within the United Nations system. In terms of administration, there may be benefits of relying on existing services (for example, with regard to recruitment and financial reporting) and facilities subject to costs.

18. Despite such advantages, establishing the Centre within the United Nations system may pose complexities, for example, with regard to its membership and resources (particularly if the use of the United Nations regular budget were to be envisaged) as well as the charging of fees for profit. It may also limit the flexibility required in its operation as well as its establishment, as obtaining the necessary

mandate or establishing the relationship within the United Nations system will require time and effort.

19. As illustrated in the chart of the United Nations system,⁹ there are a number of ways to establish the Advisory Centre within the United Nations system. The difference lies in which principal organ of the United Nations the Centre will report to or with which the work will be coordinated. It also depends on whether the United Nations secretariat is expected to function as the Centre's secretariat. Considering the variety of options and the limited time available in preparing this Note after the forty-seventh session, the following provides just a few examples for consideration by the Working Group.

20. In the field of research and training, the United Nations Institute for Training and Research (UNITAR) and the United Nations University (UNU) were established by the General Assembly to be financed by voluntary contributions¹⁰ with their own governing body. The United Nations Dispute Tribunal and the United Nations Appeals Tribunal were established by the General Assembly to address the administration of justice at the United Nations and the statutes of both tribunals were adopted by the General Assembly.¹¹ However, both tribunals were formulated as internal justice system of the United Nations.

21. A recent example is the Technology Bank for the Least Developed Countries, which was established by the General Assembly as its subsidiary organ.¹² This initiative may be particularly relevant as the General Assembly requested the Secretary-General to take the steps necessary to launch and operationalize the Technology Bank for the Least Developed Countries "funded by voluntary contributions".¹³

22. The International Tribunal for the Law of the Sea (ITLOS) and the International Criminal Court (ICC) are examples of "related organizations", which are independent bodies with a relationship agreement with the United Nations.¹⁴ It should, however, be noted that the negotiation of the relationship agreements was a lengthy process, requiring the approval of the General Assembly.

Articles 10 to 12 – Reservations, depositary and parties to the Protocol

Article 10 – Reservations

No reservations are permitted.

Article 11 – Depositary

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

Article 12 – 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*].

⁹ Available at www.un.org/sites/un2.un.org/files/un_system_chart.pdf.

¹⁰ With regard to UNITAR, see General Assembly resolutions 1934 (XVIII) and 42/197. With regard to UNU, see General Assembly resolutions 2951 (XXVII) and 3081 (XXVIII), with the latter adopting the Charter of the UNU.

¹¹ General Assembly resolution 63/253.

¹² General Assembly resolution 71/251. For background, see General Assembly resolutions 68/224 and 70/216.

¹³ General Assembly resolution 70/216.

¹⁴ Negotiated Relationship Agreement between the International Criminal Court and the United Nations entered into force on 4 October 2004 available at https://legal.un.org/ola/media/UN-ICC_Cooperation/UN-ICC%20Relationship%20Agreement.pdf. See also Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea concluded on 18 December 1997, available at https://itlos.org/fileadmin/itlos/documents/basic_texts/agr_coop_un_en.pdf.

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.

23. Articles 10 to 12 are final clauses typically found in multilateral conventions. Article 10 anticipates that there is no need to allow for any reservations. The depositary would need to be identified, with the possibility of the Secretary-General of the United Nations being designated as the depositary.

24. The draft statute has been prepared in the form of a protocol to the multilateral instrument on ISDS reform (MIIR) to avoid the need to prepare a separate treaty. However, the Working Group has yet to consider the structure and contents of the MIIR and therefore, it is unclear at this stage how the MIIR would operate (A/CN.9/1160, para. 17). Nonetheless, the Working Group may wish to provide guidance on the envisaged relationship of the draft statute with the MIIR, including whether flexibility should be provided to a State or REIO to become a Member of the Advisory Centre without necessarily becoming a party to the MIIR. This may allow those interested in establishing the Centre to proceed to address the issues of operationalization without awaiting the conclusion of the MIIR (see para. 39 below).

Article 13 – Entry into force

This Protocol shall enter into force sixth months after the deposit of the [*number to be determined*] instrument of ratification, acceptance, approval or accession provided that:

- (a) At least [*number to be determined*] States or regional economic integration organizations listed in Annex III have deposited their instrument; or
- (b) The expected contributions by States or regional economic integration organizations that are parties to the Protocol exceed [*amount to be determined*].

25. Article 13 provides for rules on entry into force of the statute and sets forth a minimum threshold for the operationalization of the Advisory Centre. While its entry into force may depend largely on the number of Members, the conditions for its establishment and for initiating its operation will depend mostly on the financial resources available including anticipated contributions. The Working Group may wish to consider whether the approach taken in article 13 is appropriate and suggest possible thresholds (for example, twenty Members and 80 per cent of the anticipated budget for the first five years of operation).

Articles 14 and 15 – Annexes and amendments

Article 14 – Annexes

The Annexes to this Protocol constitute an integral part of this Protocol.

Article 15 – Amendments to the Protocol and Annexes

1. Any Member of the Advisory Centre may submit a proposal to amend an article of this Protocol to the Governing Committee. The proposal shall be promptly communicated to all Members. The Governing Committee may adopt the amendment in accordance with article 5, paragraphs 5 and 6.
2. The Executive Director shall communicate the adopted amendment to the depositary. The depositary shall submit the adopted amendment to all Members for ratification, acceptance or approval. The adopted amendment to the articles of this

Protocol shall enter into force 30 days after the date of deposit of the instrument of ratification, acceptance or approval by all Members.

3. Any Member of the Advisory Centre, the Executive Committee or the Executive Director may submit a proposal to amend the Annexes to the Governing Committee. The Governing Committee may adopt the amendment in accordance with article 5, paragraphs 5 and 6 and regulations adopted by it. An adopted amendment shall enter into force 30 days after the notification is received by the depositary.

4. A State or a regional economic integration organization which becomes a Member after the entry into force of the amendment shall be considered as a Party to the Protocol as amended.

26. Article 14 provides that the annexes form an integral part of the draft statute. This is related to the following article on amendments to the statute, including whether the same rules shall apply to the body of the draft statute and the annexes.

27. Article 15 is based on article 11 of the Agreement establishing the ACWL considering that a similar governance structure is being envisaged as well as article 10 of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (the “Mauritius Convention”).

28. Paragraphs 1 and 2 deal with amendments to the body of the draft statute. It allows any Member to propose an amendment, which is subject to adoption by the Governing Committee in accordance with the decision-making rules in article 5(5) and (6). The Working Group may wish to consider whether a different rule on decision-making is appropriate.

29. Considering that an amendment to an international instrument can only bind contracting parties which have expressed consent to be bound by it, the amendment adopted by the Governing Committee is then subject to ratification, acceptance or approval by the contracting parties. Paragraph 2 requires unanimity of the contracting parties for the amendment to enter into force. While it is possible that the amendment could enter into force after a certain number of instruments are deposited (for example, article 10(4) of the Mauritius Convention requires three instruments), this may pose practical difficulties on the operation of the Centre as Members would be bound by a different set of articles. In essence, unanimity is being required for an amendment with regard to any article of the draft statute to take effect.

30. Paragraph 3 deals with amendments to the annexes of the draft statute, providing a more flexible approach than paragraphs 1 and 2. The Executive Committee and the Executive Director are allowed to propose amendments, in addition to Members. For example, if the list of LDCs in Annex I is updated, it would be possible to propose amendments to Annexes I and II (as a change would most likely affect both lists). The Executive Director, being closely involved in the day-to-day operation and the financial situation of the Centre, may also propose amendments to the scale of contributions in Annex IV as well as the fee structure in Annex V.

31. The Governing Committee is authorized to adopt such amendments, which shall enter into force after notification to the depositary, without the need for each Member to express their consent to the amendment. An alternative would be to authorize the Executive Committee to modify certain annexes without the involvement of the Governing Committee. In any case, such additional functions would need to be further reflected in the respective paragraphs of article 5.

32. The regulations to be adopted by the Governing Committee may detail the circumstances in which amendments to the annexes may be necessary or justified. They may refer to the overall financial situation of the Centre or objective criteria that may trigger an amendment, which could ensure predictability (for example, inflation rates, price indexes or exchange rates). The regulations may also suggest a periodic review of the lists in Annexes I to III and include objective criteria to be applied in making any adjustment (A/CN.9/1161, paras. 36 and 37). Considering that a Member is allowed to propose an amendment to Annexes I to III, the regulations

may need to clarify whether the proposed amendment may relate only to that Member's classification or other Members' classification. Furthermore, as access to services and priority to be given, the contributions to be made as well as the fees to be charged will likely change after adjustments to the classification of a Member, the regulations should detail how the adjustment would affect the Member's rights and obligations including when they shall take effect. The Working Group may wish to consider whether any of these aspects need to be set forth in the article itself.

Article 16 – Withdrawal and termination

1. Any Member may at any time withdraw from this Protocol by means of a formal notification addressed to the depositary. The depositary shall inform the Executive Director, who shall inform the Members promptly. The withdrawal shall take effect [*number to be determined*] months after the notification is received by the depositary. The obligations to make any remaining contribution at the time of withdrawal and to pay fees for the services provided by the Advisory Centre shall not be affected by the withdrawal. The withdrawing Member shall not be entitled to any reimbursement of its contributions.

2. The Governing Committee may terminate this Protocol. Upon termination, the assets of the Advisory Centre shall be distributed among the Members at that time in proportion to the total of each Member's contributions, including its voluntary contributions, to the financing of the Advisory Centre's operation.

Annexes I to III¹⁵

Annex I – List of [least developed countries¹⁶] (45)

Afghanistan, Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lao People's Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Sudan, Timor-Leste, Togo, Tuvalu, Uganda, United Republic of Tanzania, Yemen and Zambia.

Annex II – List of [developing countries] (97)

Algeria, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Barbados, Belize, Bhutan, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Cabo Verde, Cameroon, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eswatini, Fiji, Gabon, Georgia, Ghana, Grenada, Guatemala, Guyana, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Maldives, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Mongolia, Morocco, Namibia, Nauru, Nicaragua, Nigeria, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Seychelles, Singapore, South Africa, Sri Lanka, Suriname, Syrian Arab Republic, Tajikistan, Thailand, Tonga, Trinidad and Tobago, Tunisia, Türkiye, Turkmenistan, United Arab Emirates, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe.

¹⁵ A/CN.9/1061, paras. 32–39.

¹⁶ The current list of the 45 least developed countries (LDCs) is available at www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc_list.pdf. The list of LDCs is reviewed every three years by the Committee for Development Policy, a group of independent experts that reports to the Economic and Social Council (ECOSOC) of the United Nations. This list is also updated according to the decisions by the United Nations General Assembly.

Annex III – List of [others] (51)

Albania, Andorra, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands (Kingdom of the), New Zealand, North Macedonia, Norway, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America as well as any regional economic integration organization.

33. Upon the request of the Working Group, Annexes I to III have been prepared by the Secretariat in accordance with paragraphs 55 to 57 of [A/CN.9/WG.III/WP.236](#) as indicative lists ([A/CN.9/1161](#), para. 39). It classifies the 193 United Nations Member States into three categories. The classification of Members is expected to be considered by the Commission and will be subject to adjustments prior to the finalization of the draft statute ([A/CN.9/1161](#), para. 39). The names of each list are also subject to further consideration (see para. 6 above).

Annex IV – Scale of minimum contributions

	Annual contribution	Multi-year contribution	One-time contribution
Members listed in Annex I			
Members listed in Annex II			
Members listed in Annex III			

34. Annex IV reflects the deliberations of the Working Group ([A/CN.9/1161](#), paras. 100–103), with the anticipation that the minimum amount of contributions expected of the Members in the different categories would be set forth. It is foreseen that the regulations to be adopted by the Governing Committee would further detail how such contributions are to be made (including the possibility to make them in instalments) as well as the formula to calculate the actual amount of the contributions, particularly for multi-year and one-time one-off contributions. The regulations would also provide requirements to be met after a certain period of time in order to retain membership when a multi-year or one-off contribution is made.

Annex V – Schedule of fee for services rendered by the Advisory Centre

*Article 6-type services (Technical assistance and capacity-building)*¹⁷

Members listed in Annex I	Free of charge
Members listed in Annex II	Free of charge
Members listed in Annex III	Free of charge
Non-Members	To be determined by the Executive Director
Other persons or entities	To be determined by the Executive Director

¹⁷ [A/CN.9/1061](#), para. 104.

*Article 7-type services (Legal advice and support with regard to international investment dispute proceedings)*¹⁸

Members listed in Annex I	
Members listed in Annex II ¹⁹	
Members listed in Annex III ²⁰	
Non-Members ²¹	

35. Annex V reflects the deliberations of the Working Group with the anticipation that the fees to be charged by the Advisory Centre would be set forth, which would differ depending on the type of services and the beneficiary of such services. The Working Group may wish to consider whether the schedule of fees should be set forth as an annex to the draft statute. An alternative would be to provide additional language in article 8(3) leaving the details to the regulations to provide flexibility. For example, the text may read: “The Advisory Centre shall endeavour to provide the services in article 6, paragraph 1, at no additional cost to the Members. The fees to be charged to non-Members, other persons and entities shall be determined by the Executive Director in accordance with the regulations adopted by the Governing Committee. With regard to the services in article 7, paragraph 1, the fees to be charged to Members in Annex I shall be lower than those charged to Members in Annex II, which shall be lower than those charged to Members in Annex III. The fees to be charged to non-Members should be equal or higher than those charged to Members in Annex III, unless determined otherwise by the Governing Committee.”

36. The regulations to be adopted by the Governing Committee would detail how the fees would be calculated (not only based on an hourly rate, but also charging a flat fee for services as well as putting a maximum amount to be charged for a certain dispute), including for the purposes of cost recovery. The regulations would also detail the terms and conditions of the services and charging of fees and address any non-payments by a Member or a non-Member (see also article 16(1)).

III. Way forward

37. During its forty-sixth session in October 2023, the Working Group had agreed to recommend to the Commission that the draft statute be adopted in principle (A/CN.9/1160, para. 18). The Working Group may wish to confirm this way forward and request the Secretariat to present the draft statute to the Commission at its fifty-seventh session in 2024 for its consideration.

38. During its forty-seventh session in January 2024, the Working Group identified a number of the issues of operational nature and deferred those issues to the regulations to be adopted by the Governing Committee. These included, among others, detailed rules on the administration of the budget and expenditures of the Centre, services to be provided as well as with regard to terms and conditions of the staff members of the Centre. In addition, essential components of the establishment, for example, the location of the Centre, the possible establishment of regional offices, the minimum amount of contributions to be made by Members and thresholds for the entry into force of the statute, remain undetermined. These components would need to eventually be included in the draft statute itself. In short, there are issues that require further deliberations as well as preparations by the Secretariat.

39. In that context, the Working Group may wish to consider how to make progress with regard to the establishment of the Centre. In light of the issues that need to be

¹⁸ A/CN.9/1061, paras. 105–106.

¹⁹ The amount should be higher than the fees charged to Members in Annex I.

²⁰ The amount should be higher than the fees charged to Members in Annex II.

²¹ The amount should be equal to or higher than the fees charged to Members in Annex III, unless determined otherwise by the Governing Committee.

further addressed to finalize the draft statute and to operationalize the Advisory Centre (including whether to establish it under the auspices of the United Nations), the Working Group may wish to recommend to the Commission that an informal State-led process be initiated to address those issues further. This would allow the Working Group to focus on other ISDS reform elements as scheduled in the work plan. Such an informal process could involve States and REIOs interested in becoming a Member of the Advisory Centre but would be open to all other interested States and inter-governmental organizations.²² That informal process may be supported by the Secretariat with an aim to ensure coordination with the progress being made by the Working Group on other ISDS reform elements (for example, the MIIR), with the results of the process being reported back to the Commission for its consideration.²³

²² It is not uncommon for a body to establish an informal group with a mandate to perform specific tasks. In general, these informal groups are open to the States members of the body that established the informal group or could be limited to ensure focus and efficiency. As an informal group, there could be flexibility in the manner in which it conducts the work, while the rules applicable to the Commission may as well apply. The principle that governs the Working Group III informal process may also apply so that no decisions are to be taken and that the results of the process are reported back to the Commission for its consideration and decision.

²³ The support by the Secretariat would not pre-empt the possibility of establishing an independent organization. For example, the United Nations Secretariat played a crucial role in facilitating and coordinating the establishment and operation of the ITLOS and the ICC, while both were set up as independent institutions (see, for example, <https://legal.un.org/icc/prepcomm/sixth.htm>).