



General Assembly

Distr.: Limited
18 December 2024

Original: English

**United Nations Commission on
International Trade Law
Working Group III (Investor-State Dispute
Settlement Reform)
Fifty-first session
New York, 17–19 February 2025**

Summary of the first meeting on the operationalization of the Advisory Centre on International Investment Dispute Resolution submitted by the Government of Thailand

This Note reproduces a submission from the Government of Thailand containing a summary of the first meeting on the operationalization of the Advisory Centre on International Investment Dispute Resolution held from 2 to 4 December 2024 in Bangkok. The summary was submitted to the secretariat on 10 December 2024 and is reproduced as an annex to this Note.



Annex

I. Introduction

1. In July 2024, the United Nations Commission on International Trade Law (“UNCITRAL” or the “Commission”) finalized and adopted in principle the Statute of the Advisory Centre on International Investment Dispute Resolution (the “Advisory Centre”).¹ The Statute, which consists of 16 articles, sets forth rules on the creation of the Advisory Centre, its objectives, general principles of operation, membership, governance structure, services, financing, legal status and liability and other related issues.²

2. In adopting the Statute in principle, the Commission agreed that the operationalization of the Advisory Centre would require further preparatory work.³ The Commission agreed that the basis of the preparatory work should be the Statute and that the work could address issues such as: (a) ways to establish the Advisory Centre within the United Nations system based entirely on extrabudgetary resources; (b) criteria for determining the location of the headquarters and regional offices; (c) the anticipated budget based on potential membership and workload, and the need to ensure sustainable operations; (d) the amount of contributions by Members and methods of payment; (e) objective criteria for classifying States in the annexes; (f) thresholds of membership and contributions for the entry into force of the Statute; and (g) decisions, rules and regulations to be adopted by the Governing Committee, including staff and financial regulations.⁴

3. The Commission also agreed that in order to facilitate the preparatory work, it would utilize an informal process involving all States and regional economic integration organizations (REIOs). It was agreed that, as an informal process, no decisions should be made, and the transparency and inclusiveness of the process should be maintained by ensuring remote participation and by making a summary of the informal discussions available.⁵

4. Accordingly, the first meeting on the operationalization of the Advisory Centre (“AC-OP Meeting” or the “Meeting”) was held from 2 to 4 December 2024 in Bangkok.⁶ The Meeting was organized jointly by the Ministry of Foreign Affairs of Thailand and the UNCITRAL secretariat. The Meeting, which was held in person and online, was attended by participants from more than 80 States and REIOs, with the total participants exceeding 190 (approximately 75 individuals attended in person and 115 attended online).

5. The Meeting was facilitated by informal background documents prepared by the UNCITRAL secretariat, including a provisional agenda; ways to establish the Advisory Centre within the United Nations system; classification of Members; criteria to determine the location of the headquarters and regional offices; and a sample budget and financing of the Advisory Centre.⁷

6. Ms. Vilawan Mangklatanukul, the Chair of the fifty-seventh session of the Commission, opened the Meeting by underscoring its significance as the first AC-OP Meeting and the importance of the Advisory Centre in promoting accessible dispute resolution mechanisms, which would address inequalities and enhance the capacity of least-developed and developing countries to prevent and handle international investment disputes. Recalling the mandate of Working Group III,

¹ *Official Records of the General Assembly., Seventy-ninth Session, Supplement No. 17 (A/79/17)*, para.167.

² *Ibid.*, Annex III.

³ *Ibid.*, para. 159.

⁴ *Ibid.*, para. 158.

⁵ *Ibid.*, para. 159.

⁶ *Ibid.*, para. 161.

⁷ Background documents are available at: <https://uncitral.un.org/en/content/first-advisory-centre-operationalization-meeting-bangkok-thailand-2%E2%80%934-december-2024>.

Ms. Anna Joubin-Bret, the Secretary of UNCITRAL, thanked the Government of Thailand for the initiative, recalled the decisions of the Commission, and mentioned that the operationalization of the Advisory Centre could set a precedent for other institutional Investor-State Dispute Settlement (ISDS) reforms under consideration by Working Group III. Mr. Shane Spelliscy, Vice-Chair of the fifty-seventh session of the Commission, highlighted the need for ISDS reform to address the legitimacy crisis and to ensure a fair dispute settlement system. The sessions of the Meeting were chaired by Mr. Shane Spelliscy and Ms. Natalie Yu-Lin Morris-Sharma, respectively the Chair and Rapporteur of Working Group III.

II. Establishment of the Advisory Centre within the United Nations system

7. Discussions focused on possible ways to establish the Advisory Centre within the United Nations system, including as a subsidiary organ of the General Assembly, a research or training entity, a specialized agency or a related organization. Additional information was provided about the United Nations Technology Bank for the Least Developed Countries and the International Tribunal for the Law of the Sea (ITLOS) as possible models.

8. While it was noted that establishing the Advisory Centre as a subsidiary organ of the General Assembly based entirely on voluntary contributions might take less time and reduce the burden on potential Members, it was viewed that such an approach would likely require substantive changes to the current Statute, particularly with regard to the membership and financial obligations.

9. It was generally viewed that the Advisory Centre should be established in line with the Statute as an independent and autonomous organization and that a relationship should be sought with the United Nations. In that connection, it was felt that the Advisory Centre should be established as a “related organization” or a “specialized agency” of the United Nations, noting that the required steps and the time frame for each approach might slightly differ (for example, whether the Economic and Social Council of the United Nations would be involved in the conclusion of the agreement). The discussions touched upon issues to be included in the relationship agreement, such as coordination of activities, reciprocal representation, reporting mechanism, cooperation between the secretariats, and personnel arrangements including the use of United Nations laissez-passer, and the application of the rules and regulations of the United Nations. The possible relationship of the Advisory Centre with the Sixth Committee (Legal) of the General Assembly, UNCITRAL and other institutional reforms being developed by the Working Group were also discussed.

10. It was noted that while voluntary contributions could expedite the operationalization of the Advisory Centre particularly if established as a subsidiary organ of the General Assembly, its reliance entirely or heavily on such voluntary contributions (instead of annual contributions by Members) could be detrimental to its financial sustainability. It was mentioned that requiring annual financial contribution in the Statute would make it easier for Members to make the necessary payment, as it was difficult to make voluntary contributions. On the other hand, it was also mentioned that annual financial contributions could be a barrier to increased membership, particularly for least developed countries. In response, it was said that voluntary contributions could be earmarked to address such a situation, for example, to support least developed countries to make their annual contribution or to reduce their fees for services, while the membership contributions could be used to fund the core operations of the Advisory Centre.

11. It was noted that primary issues relating to the privileges and immunities of the Advisory Centre and its staff members were set out in article 9 of the Statute, which would be further elaborated in the host country agreement. However, considering that the activities of the Advisory Centre were likely to take place outside the headquarters

(including in the territory of non-Member States), it was suggested that the possible application of the 1946 Convention on the Privileges and Immunities of the United Nations or the 1947 Convention on the Privileges and Immunities of the Specialized Agencies should be sought to ensure that the same level of privileges and immunities are granted to protect the Advisory Centre's integrity and independence.

United Nations Common System, Rules & Regulations and Joint Staff Pension Fund

12. There was general support that the Advisory Centre should aim to become part of the United Nations Common System overseen by the International Civil Service Commission. There was also general support that the administrative framework of the United Nations should form the basis of the Advisory Centre's operations, as it could improve the efficiency in delivering the core services. This included staff rules and regulations as well as financial rules and regulations, which could be applied directly or used as a benchmark. Preference was also expressed for the Advisory Centre to seek participation in the United Nations Joint Staff Pension Fund (UNJSPF).

Interim secretariat

13. It was noted that there could be benefit in the United Nations Secretariat (including possibly the UNCITRAL secretariat) functioning as the interim secretariat of the Advisory Centre until the Statute entered into force and the permanent secretariat was set up. It was suggested that the interim functions should be carried out through extrabudgetary resources (e.g. voluntary contributions), so that there would not be any implications for the regular budget of the United Nations. It was mentioned that a function to be carried out by the interim secretariat could be to collect voluntary contributions from States, international organizations, REIOs and other entities (including private entities) and to manage the trust fund, which could facilitate the entry into force of the Statute and the initial operation of the Advisory Centre. It was also mentioned that if the United Nations Secretariat were to function as the interim secretariat, the financial rules and regulations on voluntary contributions would be applicable.

III. Criteria to determine the location of the headquarters and regional offices

14. Discussions were held on the possible criteria for determining the location of the headquarters and/or regional offices of the Advisory Centre. Among others, the following factors were discussed: (i) support from the host State/Government, (ii) stable environment, (iii) accessibility, (iv) proximity to dispute resolution venues, (v) geographic distribution of international organizations, (vi) attractiveness to a qualified workforce, (vii) number of ISDS claims in a region, and (viii) cooperation and coordination with other organizations and relevant stakeholders. Views diverged on the weight to be accorded to each factor.

15. It was mentioned that the willingness of the host State or Government to contribute financially to the setting up of the Advisory Centre and its sustainable operation (including by providing the premises and other infrastructure) would be important factors to consider. In a similar vein, it was said that a favourable and stable environment for the Centre's operation as well as the readiness of the host State to conclude a host country agreement should be taken into account.

16. It was highlighted that the Advisory Centre should be easily accessible to Members, particularly its main beneficiaries, both in the geographical and economic sense. It was mentioned that affordability of the Centre's services would affect their accessibility. In that context, it was mentioned that well-functioning international airports and public transport networks which affected the travel costs to and from the Centre should be considered. It was also observed that proximity to potential dispute resolution venues should be considered as an element of accessibility. It was emphasized that proximity to law firms and experts, availability of administrative

services (such as interpretation and technical infrastructure) would further need to be assessed.

17. Views were expressed that locating the headquarters in a developing country would ensure a better distribution of international organizations in different parts of the world and align with the broader agenda of the Sustainable Development Goals by fostering inclusiveness. It was said that the success of the Advisory Centre would depend on the quality of its legal services and its location should be able to attract talented personnel to deliver satisfactory services to its clients.

18. It was generally felt that the number of ISDS claims against respondent States in a specific region was not critical in determining the location, as such figures would likely change over time. While emphasis was put on the location's proximity to the beneficiaries, it was pointed out that the membership of the Advisory Centre was still unknown, which made it difficult to reflect on this factor.

19. It was widely felt that a holistic approach should be taken when determining the headquarter of the Advisory Centre, taking into account the factors mentioned above. It was also widely felt that it would be difficult for one location to meet all of the criteria. It was said that the establishment of a regional office or regional offices should be considered as a package, which would ensure a more efficient distribution of services, address regional specificities and foster inclusiveness in the Centre's operations. Noting the benefits of such complementarity, it was also said that the resource implications of operating regional offices would need to be taken into account. Calls were made that Governments wishing to host the headquarters or regional offices of the Advisory Centre should work closely to ensure its timely establishment. In that context, the Governments of Thailand and France expressed their willingness to cooperate to establish the Centre in light of the complementarity between Bangkok and Paris vis-à-vis headquarters and a regional office and called on other interested Governments to join.

Way forward

20. After discussion, the secretariat was requested to rearrange the list of factors to determine the location of the headquarters and regional offices based on the deliberations. It was observed that the objectives of the Advisory Centre and the general principles outlined in articles 2 and 3 of the Statute should guide such work. It was further suggested that the secretariat should prepare a road map for the operationalization of the Centre, including a timetable for determining its location(s) (with a deadline for Governments to express their interest to host the Centre) and the necessary steps to be taken.

Presentations by Governments that expressed an interest in hosting the headquarters or regional office of the Advisory Centre

21. On 2 December 2024 (Monday), the representatives of Armenia, Côte d'Ivoire, Democratic Republic of the Congo, France, Ghana and Thailand reiterated their interest to host the headquarters or regional office of the Advisory Centre.⁸

22. Calls were made that other Governments wishing to host the headquarters or regional office should express their interest as soon as possible. Similarly, calls were made for Governments that have expressed such interest to provide additional information on the support they could provide in hosting the Advisory Centre, including financial and in-kind support (for example, premises, information and communications technology equipment, furniture and office supplies). In that context, the Governments of Thailand and the Democratic Republic of the Congo announced their willingness to provide voluntary contributions for hosting the Advisory Centre in their respective States.

⁸ The video presentations are available at <https://uncitral.un.org/en/content/first-advisory-centre-operationalization-meeting-bangkok-thailand-2%E2%80%934-december-2024>.

IV. Classification of the Members of the Advisory Centre

23. Discussions took place on the classification of Members of the Advisory Centre in the annexes of the Statute, as the classification would establish the priority to be given to each category of Members in accessing the services of the Advisory Centre (articles 2 and 7) and determine the contributions and fees to be paid by each category of Members (article 8).

24. On whether the priority to be given should be linked to the contributions to be made to the Centre's budget, there was general support that the two aspects need not necessarily be linked. It was said that the classification in the Annexes could determine the priority to be given and the fees to be charged for services, and that the budget of the Centre could be allocated among the Members in a different way. This was particularly in light of the fact that the budget of the Centre would need to be adjusted over time (depending on the type and level of services provided as well as the number of staff members) and fixing the amount of annual contributions might not always be reasonable. However, it was also said that indicating the fixed amount would allow potential Members to be clearly informed of the financial obligations of becoming a Member.

Budget allocation

25. On how the budget could be allocated among the Members, a number of different options were considered. In light of the fact that the Advisory Centre was to be established within the United Nations system, the advantages of relying on the United Nations scale of assessments to determine the Members' annual contributions was underlined. The United Nations scale of assessments, operating on a three-year basis and also taking into account the capacity to pay, was said to provide a predictable reference point, while allowing for necessary adjustments and flexibility. It was said that the introduction of minimum and maximum percentages of the budget (or a fixed amount) would cater for balance among the Members and reflect the evolving needs of the Advisory Centre. It was mentioned that such an approach could be reflected in Annex IV.

Classification for the purposes of priority

26. The classification of the Members for the purposes of determining their priority in accessing services was discussed. On whether Annexes I to III should contain a pre-determined list of States as potential Members of the Advisory Centre, it was said that such an approach would provide clarity on the rights and obligations of potential Members. On the other hand, it was questioned whether there was a need to populate the Annexes with States that were not Members of the Advisory Centre (or did not have the intention to become one), further noting that there might be difficulties in populating the list or identifying the list to be used as well as in making necessary amendments. Therefore, it was generally felt that the Annexes should list States and REIOs as they ratify or accede to the Statute, in other words, when they become Members.

27. While the Commission had discussed the possibility of developing objective criteria to classify Members in the context of article 15(4), doubts were expressed about developing such criteria (for example, ISDS case experience, potential number of cases, amount in dispute and the capacity to pay). It was noted that the application of any developed criteria would put a burden on the Advisory Centre's operation, as it would require an assessment of each Member based on those criteria when joining.

28. Instead, it was suggested that reference could be made to existing classifications developed by other organizations. References were made to the classifications by the World Bank, the World Trade Organization (WTO), the International Monetary Fund (IMF) as well as the Advisory Centre on WTO Law (ACWL), while noting that they had been prepared for different purposes and did not necessarily relate to ISDS or the services to be provided by the Advisory Centre.

29. In light of the above, there was support for relying on the historical classification of the United Nations or the classification used by United Nations Trade and Development (UNCTAD), which was built on the historical classification and took into account other elements, such as the geographic location, development status and economic criteria.⁹ It was noted that UNCTAD introduced distinctions among the developing economies based on GDP per capita (high-level income, middle-income and low-income) as well as different groupings (for example, small island and landlocked developing States).

30. It was widely felt that Annex I should reflect the official list of least developed countries as it would align with article 2(2) of the Statute. There was also support for further categorizing developing countries (namely, splitting Annex II into more than one Annex or introducing subcategories within Annex II), so as to better reflect the wide range of economic circumstances in those countries. However, caution was expressed as the number of Annexes could have an impact on the governance of the Advisory Centre (article 5(5) on the Executive Committee), entry into force of the Statutes (article 13(1)(a)) as well as the amendment procedure for the Annexes (article 15(4) and (5)).

31. It was noted that article 15(4) of the Statute anticipated limited self-assessment by Members, mainly to waive its priority and to make a higher amount of contributions to the budget. It was questioned whether such self-assessment would still be necessary if the priority and the budget allocation were to be delinked (see para. 24 above).

32. As REIOs were not necessarily categorized in the existing classifications, including that of UNCTAD, it was suggested that they would need to be classified based on their membership (for example, the Annex where the majority of the members would belong to). Similarly, it was mentioned that the United Nations scale of assessments did not provide the scale for REIOs. The secretariat was requested to review how specialized agencies and related organizations handled REIOs' contribution to their budget.

Way forward

33. The secretariat was requested to prepare an indicative list of States that would be included in the Annexes based on the UNCTAD classification, taking a more granular approach. The secretariat was requested to consider if such an approach would require any modifications to the Statute. It was suggested that the fees to be charged for services to each category of Members (see article 8(3)(b) of the Statute and anticipated to be elaborated in the regulations adopted by the Governing Committee) could be discussed at a future AC-OP meeting.

V. Budget and financing of the Advisory Centre

34. Discussions were held about the budget of the Advisory Centre based on a sample figure prepared by the secretariat. That sample estimated an installation cost of \$420,000 and an annual operation cost of \$4.87 million. It was, however, noted that the sample figure was calculated based on a number of assumptions and that the budget would differ depending on the location of the Centre.

35. It was stated that the budget would largely depend on the services to be provided by the Advisory Centre, including whether it would be expected to provide article 7 services from the outset. It was also mentioned that the number of Members (including that of the beneficiaries) would have an impact on the budget of the Centre. While views were expressed that the Advisory Centre should begin its operation with a small secretariat focusing mainly on article 6 services (technical assistance and capacity-building), it was stressed that the Centre should be prepared to provide article 7 services (mainly representation services) to respond to the needs of the

⁹ See <https://unctadstat.unctad.org/EN/Classifications.html>.

beneficiaries and to gain their trust. In support, it was mentioned that the fees to be generated by article 7 services (which was also considered to be the most resource intensive) were expected to be a key source of income for the Advisory Centre (reducing the burden of Members with regard to annual fees and gradually covering the costs) and not providing such services might not fulfil the expectations for the Centre.

36. In that context, it was said that the composition of the Centre's secretariat may need to be further examined to ensure that it would be able to provide the necessary services, yet in a flexible manner. It was noted that one of the assumptions that led to the sample budget figure was that the secretariat would consist of 21 staff members including the Executive Director. Considering the possibility to phase in some of the services and the likely small number of beneficiaries in the early stages of the Centre's operation, it was suggested that the configuration of its secretariat with a smaller number of staff members could be envisaged (including an absolute minimum). It was mentioned that the number of initial staff members would have implications on whether a regional office should be sought at the same time as the headquarters.

37. A number of related aspects were discussed. It was suggested that in the early stages of the operation, the budget cycle should not be too long (one or two years) to provide flexibility in the Centre's operation, while long-term strategic planning could be prepared including for fundraising purposes. It was, however, mentioned that Members should be informed well in advance of their financial obligations in order to ensure that they make the necessary payments. It was also pointed out that the sample budget would need to take into account technology developments necessary to deliver adequate services, such as subscriptions to legal databases, cost for case management software and other artificial intelligence tools. It was also suggested that the budget should include costs arising from any secondment programmes, which would allow government lawyers from Members to be trained at the Centre.

38. Ways to alleviate the burden of least developed countries in becoming Members of the Advisory Centre and to encourage their timely joining were also discussed, which included an exemption of the annual contributions, the levying of a one-time access fee which would allow them to benefit from lower service fees, and direct support from voluntary contributions received in the trust fund established for supporting least developed countries (see para. 10 above). On the other hand, the importance of ensuring upfront payments by Members of their membership dues was also underlined.

39. Discussions were held about Members making a one-time contribution in lieu of their annual contribution. While the benefits of such a contribution were mentioned (mainly as seed money for the earlier stages of the operation as well as a source of recurring income if deposited in an endowment fund), doubts were expressed about its impact on the financial sustainability of the Centre and equity with other Members making annual contributions.

40. On the fees to be charged for article 7 services, the possibility of charging a retainer fee combined with hourly rates were considered. Similarly, flat rates for certain types of services or certain stages of proceedings were also mentioned. It was also noted that fees received for services should be administered separately from the annual contributions in order to avoid a situation whereby fees received from least developed countries would result in subsidizing or reducing the annual contribution of other Members.

Way forward

41. The secretariat was requested to prepare two additional budget samples based on a smaller number of staff members (a total of 10 and 15 staff members) and an estimate of the services that could be provided under those circumstances. It was also suggested that the question relating to threshold for entry into force of the Statute could be considered at the next AC-OP meeting.

VI. Other issues

42. It was noted that the summary of the first AC-OP meeting would be provided to Working Group III in February 2025 and reported to the fifty-eighth session of the Commission in 2025.

43. A proposal by the Government of Armenia to host the second AC-OP meeting in Yerevan from 6 to 8 May 2025 was welcomed. The secretariat was requested to support the second AC-OP meeting and to further consult with other Governments that had expressed an interest in hosting additional AC-OP meetings.
