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Draft statute of an advisory centre on international investment dispute resolution

Note by the Secretariat

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I. Introduction

1. At its thirty-eighth session of Working Group III in October 2019, there was general support for considering the establishment of an advisory centre (A/CN.9/1004*, paras. 28–50).¹ Since then, Working Group III discussed the establishment of an advisory centre at its forty-third session in September 2022 (A/CN.9/1124, paras. 42–65),² forty-sixth session in October 2023 (A/CN.9/1160, paras. 13–85),³ forty-seventh session in January 2024 (A/CN.9/1161, paras. 15–111)⁴ and forty-eighth session in April 2024 (A/CN.9/1167, paras. 13–72).⁵

2. At its forty-eighth session, Working Group III approved the draft statute of an advisory centre on international investment dispute resolution (the “draft statute” or the “statute”) and requested the Secretariat to present it for finalization and adoption in principle by the Commission at its fifty-seventh session in 2024.

3. Accordingly, chapter II of this note contains the draft statute for consideration by the Commission reflecting the decisions and deliberations of Working Group III (A/CN.9/1167, para. 73). Chapter III contains notes for the Commission to consider regarding the draft statute and chapter IV contains a summary of the recommendation made by Working Group III on the operationalization of the advisory centre.

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

Article 1 – Establishment⁶

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

Article 2 – Objectives⁷

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.

Article 3 – General principles⁸

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.

¹ Discussions were based on document [A/CN.9/WG.III/WP.168](#).

² Discussions were based on document [A/CN.9/WG.III/WP.212](#) and [A/CN.9/WG.III/WP.212/Add.1](#).

³ Discussions were based on document [A/CN.9/WG.III/WP.230](#) and [A/CN.9/WG.III/WP.212/Add.1](#).

⁴ Discussions were based on document [A/CN.9/WG.III/WP.236](#).

⁵ Discussions were based on document [A/CN.9/WG.III/WP.238](#).

⁶ [A/CN.9/1161](#), para. 16.

⁷ [A/CN.9/1161](#), paras. 17–22.

⁸ [A/CN.9/1161](#), paras. 23–27.

Article 4 – Membership⁹

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 Annex I, Annex II or 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 – Structure¹⁰

1. The Advisory Centre shall consist of a Governing Committee, an Executive Committee and a Secretariat headed by an Executive Director.

Governing Committee

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 [and those of the Executive Committee];
 - (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;
 - (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.

Executive Committee

5. The Executive Committee shall consist of six members. The Executive Director shall also serve *ex officio* on the Executive Committee. Each group of Members 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

⁹ A/CN.9/1161, paras. 28–41 and A/CN.9/1167, paras. 14–15.

¹⁰ A/CN.9/1161, paras. 42–65 and A/CN.9/1167, paras. 16–22.

professional qualifications, including in particular in international investment dispute resolution.

6. The Executive Committee shall be accountable 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 [prepared by the Executive Director] 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 this Protocol and as assigned by the Governing Committee.

Decision-making

7. The Governing Committee and the Executive Committee shall endeavour to make all decisions by consensus.

8. If a decision cannot be made by consensus in the Governing Committee, 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.

9. If a decision cannot be made by consensus in the Executive Committee, the subject matter may be submitted to a vote, which requires the presence of a majority of the members of the Executive Committee. Each member shall have one vote and the Executive Director, serving *ex officio*, shall not have a 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 Executive Committee, the decision of which may be made by a four-fifths majority of the members present and voting.

Executive Director

10. 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.

11. The Executive Director shall be accountable to the Governing Committee.

12. 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-building¹¹

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.

3. The Advisory Centre may engage other persons or entities in providing the services in paragraph 1.

4. 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.

5. The regulations adopted by the Governing Committee shall require the Executive Director to set appropriate fees for the participation of non-Members, other persons or entities, 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 proceedings¹²

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;

¹¹ A/CN.9/1161, paras. 66–86.

¹² A/CN.9/1161, paras. 87–95.

- (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 representatives; and
 - (f) Performing any other functions as assigned by the Governing Committee.
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 listed in the same Annex, 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 – Financing¹³

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 in accordance with the regulations adopted by the Governing Committee:
 - (a) Services in article 6, paragraph 1, shall be provided at no cost to 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;
 - (b) The fees to be charged by the Advisory Centre for services in article 7, paragraph 1, shall not exceed the amount necessary to recover its costs. The fees to be charged to Members listed in Annex I shall be lower than those charged to Members listed in Annex II, which shall be lower than those charged to Members listed in Annex III. The fees to be charged to non-Members shall be equal to or higher than those charged to Members listed in Annex III, unless determined otherwise 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 the independent operation of the Advisory Centre.

¹³ A/CN.9/1161, paras. 96–109 and A/CN.9/1167, paras. 25–26.

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.

Article 9 – Legal status and liability¹⁴

1. The Advisory Centre shall have full international legal personality, which shall include 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 [*to be determined*] based on a host country agreement with [*host State/Government to be determined*]. The Governing Committee may decide to relocate the headquarters, either temporarily or permanently, in the event that exceptional circumstances so significantly impact the operational effectiveness of the headquarters that the existing location is no longer suitable.
3. The Governing Committee may decide to establish regional offices of the Advisory Centre.
4. To fulfil its objectives, the Advisory Centre shall enjoy in the territories of each Member the privileges and immunities as set out in this Protocol.
5. The Advisory Centre, its property and assets shall enjoy, at a minimum, such immunity as necessary for the fulfilment of its objectives and for the exercise of its functions, except when the Advisory Centre waives this immunity.
6. The Advisory Centre, its property, assets and income, and its operations and transactions authorized by this Protocol shall be exempt from direct taxation and all customs duties. The Advisory Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.
7. 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.
8. 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.

Article 10 – Reservations¹⁵

No reservations are permitted under this Protocol.

Article 11 – Depositary¹⁶

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

Article 12 – Signature, ratification, acceptance, approval, accession¹⁷

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.

¹⁴ A/CN.9/1167, paras. 27–42.

¹⁵ A/CN.9/1167, paras. 44–47.

¹⁶ A/CN.9/1167, para. 48.

¹⁷ A/CN.9/1167, paras. 49–50.

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

Article 13 – Entry into force¹⁸

1. This Protocol shall enter into force six months after the date of deposit of the [*number to be determined, including the possibility to require a certain number from each group of Members*] instrument of ratification, acceptance, approval or accession, provided that the expected contributions of States or regional economic integration organizations that are Parties to the Protocol exceed [*to be determined, for example, 80 per cent of the anticipated budget for the first five years of operation*].

2. When a State or a regional economic integration organization ratifies, accepts, approves or accedes to this Protocol after its entry into force in accordance with paragraph 1, this Protocol enters into force in respect of that State or regional economic integration organization thirty (30) days after the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 14 – Annexes¹⁹

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

Article 15 – Amendments to the Protocol and Annexes²⁰

Amendments to an article of the Protocol

1. Any Member 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 7 and 8.

2. The Executive Director shall communicate the amendment adopted pursuant to paragraph 1 to the depositary. The depositary shall submit the adopted amendment to all Members for ratification, acceptance or approval. The adopted amendment shall enter into force thirty (30) days after the date of deposit of the instrument of ratification, acceptance or approval by all Members.

Amendments to the Annexes

3. Any Member, the Executive Committee or the Executive Director may submit a proposal to amend Annexes I, II, III or IV to the Governing Committee. The proposal shall be promptly communicated to all Members.

4. The Governing Committee shall adopt amendments to Annexes I, II and III in accordance with article 5, paragraphs 7 and 8 only:

(a) To reflect in Annexes I and II, [*any changes to*] the list of least developed countries adopted by the United Nations General Assembly;

(b) To include in Annex II or III, a State listed in Annex I which requests to be thus included;

(c) To include in Annex III, a State listed in Annex II which requests to be thus included; or

(d) [*To refer to the possible use of objective criteria to be developed for classifying Members into Annexes II and III in making adjustments thereto*].

5. The Governing Committee shall endeavour to adopt amendments to Annex IV by consensus. If a decision cannot be made by consensus, the amendment shall be submitted to a vote to each group of Members listed in Annexes I, II and III.

¹⁸ A/CN.9/1167, paras. 51–55.

¹⁹ A/CN.9/1167, para. 56.

²⁰ A/CN.9/1167, paras. 57–64.

The amendment shall be adopted when each group of Members adopts the amendment in accordance with article 5, paragraphs 7 and 8.

6. The Executive Director shall communicate the amendment adopted pursuant to paragraphs 4 and 5 to the depositary. The adopted amendment shall enter into force thirty (30) days after the notification is received by the depositary.

Party to the Protocol as amended

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

Article 16 – Withdrawal and termination²¹

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 promptly communicate the withdrawal to all Members. The withdrawal shall take effect thirty (30) days 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. If a Member submits the notification of withdrawal within three (3) months of the date of receipt by the depositary of the notification of an amendment to any of the Annexes, the amendment shall not apply to that Member.

3. 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.

Annexes²²

Annex I

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

[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,

²¹ A/CN.9/1167, paras. 65–67.

²² A/CN.9/1161, paras. 32–39 and A/CN.9/1167, paras. 15 and 68–72.

Tunisia, Türkiye, Turkmenistan, United Arab Emirates, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe].

Annex III

[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.

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			

III. Notes to the Commission

4. The Commission may wish to consider the following points identified by the Secretariat in preparing the draft statute based on the deliberations of the Working Group.

Article 4, paragraph 1

5. The Commission may wish to note that the draft statute, in particular, article 4(1), reflects the understanding of Working Group III that a regional economic integration organization (REIO) could be a Member of the Advisory Centre with its own rights and obligations, including the right to vote and the obligation to pay financial contributions.²³ The Working Group clarified that member States of a REIO could not vote or benefit from the services of the Centre unless they were Members themselves and vice versa.²⁴ It was also agreed that REIOs would be listed in Annex III.²⁵ The Commission may wish to confirm these understandings with regard to the draft statute, while noting that those issues may need further consideration in the context of the multilateral instrument on ISDS reform.

Article 5, paragraphs 3 and 6, and 7 to 9

6. As article 5(6)(a) indicates that the Executive Committee shall propose its rules of procedure for adoption by the Governing Committee, the Commission may wish to reflect this function of the Governing Committee in article 5(3)(a) by adding the words “and those of the Executive Committee”.

7. The Commission may wish to note that article 5(3)(i) allows the Governing Committee to adjust the scope and type of services of the Centre. In light of the divergence in views, the Working Group decided not to include any reference to State-to-State dispute settlement (SSDS) in the draft statute but instead left it to the

²³ A/CN.9/1167, para. 21. See also A/CN.9/1161, paras. 29 and 59.

²⁴ Ibid.

²⁵ A/CN.9/1167, para. 70.

Governing Committee to determine whether SSDS-related services could be provided.²⁶

8. The Commission may wish to add the words “prepared by the Executive Director” in article 5(6)(c) to align the text with article 5(3)(h) and 5(10)(d).

9. With regard to paragraphs 7 to 9, it is anticipated that the rules on decision-making will be further detailed in the rules of procedure to be adopted by the Governing Committee, for example, the meaning of “consensus” and “presence” and that the quorum required for the “first vote” would not apply to the “second vote”.²⁷

Article 6, paragraphs 2, 3 and 5

10. The Commission may wish to confirm that paragraphs 2 and 3 deserve to be separate paragraphs as each pertain to different aspects of the Advisory Centre’s operations. One deals with cooperation with outside organizations and the other deals with the involvement of other persons or entities in providing the Centre’s services. The Commission may wish to further consider whether paragraph 2 is necessary in light of article 3(3).

11. Paragraph 5 is presented as a separate paragraph instead of a sentence that followed subparagraph (a) and (b) in paragraph 4 to apply to both subparagraphs. The separation is to avoid any confusion on how that sentence relates to the subparagraphs and to avoid any confusion due to the formatting of that sentence. The Commission may wish to confirm that the placement of the new paragraph and adjustments made are appropriate.

Article 8

12. The Commission may wish to note that the discussions by the Working Group on article 8 was based on an informal document prepared by the secretariat on the budget and financing of an advisory centre.²⁸

Article 9

13. The Commission may wish to take note of the agreement in Working Group III that there would be merit in establishing the Centre within the United Nations system.²⁹ It should further note that the Working Group agreed that the establishment and operation of the Centre should not have any implication on the regular budget of the United Nations and vice versa.³⁰ The Commission may wish to confirm these agreements of the Working Group.

14. In addition, the Commission may wish to note that ways to establish the Centre within the United Nations system were identified by the Working Group as issues to be delved into during the operationalization of the Centre.³¹ In that light, the Commission may wish to provide guidance on such work, for example, which principal organ of the United Nations the Centre should report to or with which its work should be coordinated and whether the United Nations secretariat should be expected to carry out the function as the Centre’s secretariat, including on an interim basis until the entry into force of the draft statute or the first meeting of the Governing Committee. The Commission may wish to further note that some of the articles in the draft statute will be affected and may need to be adjusted depending on how the Centre is established within the United Nations system (for example, articles relating to membership, rules and regulations, financing and audits as well as privileges and

²⁶ A/CN.9/1167, para. 23.

²⁷ A/CN.9/1167, para. 19.

²⁸ Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/EN/budget_and_financing_of_an_ac_rev.pdf.

²⁹ A/CN.9/1167, paras. 28. Possible ways to establish the Centre within the United Nations system and examples thereof are provided in document A/CN.9/WG.III/WP.238, paras. 16–22.

³⁰ Ibid.

³¹ A/CN.9/1167, para. 75.

immunities). Rules on the premises and archives of the United Nations and dispute settlement involving the United Nations and its staff members may also become relevant.

15. Paragraph 2 reflects the agreement in Working Group III that the location of the headquarters of the Centre shall be set forth in the draft statute. The Working Group had identified that the criteria to determine the location of the headquarters and regional offices could be discussed as an operationalization issue.³² The Commission may wish to provide guidance on what is expected of such discussions, for example, whether it should address when and how the location would be determined.

16. The second sentence of article 9(2) provides for a mechanism to relocate the headquarters in limited situations, mainly to ensure the operational effectiveness of the Centre. The Commission may wish to confirm that if the first sentence of article 9(2) were to be amended to reflect the new permanent location of the headquarters, the amendment process as outlined in article 15(1) and (2) would apply, as they address amendments to an article of the statute.³³

17. The Commission may wish to note that the host country of the Centre or its regional offices could provide privileges and immunities and tax exemptions in addition to those provided in article 9, which could be detailed in the respective host country agreement. The Commission may wish to confirm that such possibility need not necessarily be reflected in the article.

18. With regard to paragraph 8, the Commission may wish to simplify the text so that the same conditions would apply to the Executive Director and the staff members of the Centre's Secretariat. The paragraph would read as follows: "No tax shall be levied on or in respect of salaries, expense allowances or other emoluments paid by the Advisory Centre to the Executive Director and the staff members of the Secretariat."

Article 13

19. The threshold for the entry into force of the statute addressed in article 13(1) is also one of the operationalization issues identified by Working Group III.³⁴ This is because the membership of the Centre, which would determine the amount and level of services to be provided by the Centre and the resources available to it, is yet unknown. Nonetheless, the Commission may wish to provide guidance on: (i) whether a minimum number of Members from each of the Annexes would need to become a Party to the statute in order for the statute to enter into force; and (ii) if so, the appropriate number, which could reflect a balance among the so-called beneficiary and donor Members. Similarly, while noting that the anticipated budget of the Centre is yet to be determined, the Commission may wish to confirm that projected income (including voluntary contributions) amounting to 80 per cent of the anticipated budget for the first five years of the Centre's operation could ensure a sustainable setup and initial operation of the Centre and could be used as an additional threshold for the entry into force of the statute.

20. In that context, the Commission may wish to replace the phrase "by States or regional economic integration organizations that are Parties to the Protocol" with "in accordance with article 8", which would allow for voluntary contributions from non-Members or other entities (addressed in paragraph 4 of that article) to be taken into account when determining when the statute enters into force.

21. The Commission may wish to confirm that the thirty-day period in paragraph 2 is appropriate.

³² Ibid.

³³ Ibid., para. 38.

³⁴ A/CN.9/1167, paras. 75.

Article 15

22. Article 15 has been prepared with subheadings to clarify how the amendment process differs between that relating to articles of the statute and that relating to the Annexes. A number of editorial changes have been made to ensure consistency within the paragraphs and with other articles of the draft statute.

23. The word “only” at the end of the chapeau in paragraph 4 reflects the understanding of Working Group III that amendments to the Annexes should be allowed in limited circumstances and that the following subparagraphs provide an exhaustive list of those circumstances. The Commission may wish to confirm this approach.

24. With regard to paragraph 4(a), the Commission may wish to consider revising it to read “To reflect the list of least developed countries adopted by the United Nations General Assembly in Annex I.” This wording would be broad enough to capture any changes to the list of LDCs.

25. Paragraph 4(d) reflects the agreement of the Working Group that objective criteria should be developed to classify Members into Annexes II and III and that such criteria could be used to amend the Annexes.³⁵ It was generally felt that the objective criteria should reflect the State’s capacity to contribute to the financing of the Centre and this was left as one of the operationalization issues (see para. 27 below).³⁶

Article 16

26. The Commission may wish to note that the second sentence of article 16(1) has been aligned with other articles to ensure consistency.

Annexes

27. The Commission may wish to note that the list of States in Annexes II and III are only indicative and aimed at facilitating the discussions.³⁷ It may wish to note that a suggestion had been made in the Working Group that the lists could be developed based on objective criteria, which would determine which category a potential Member would belong to. The Commission may wish to provide guidance on this issue, including the objective criteria to be developed.

28. With regard to Annex IV on the scale of minimum contributions, the Commission may wish to note the agreement of the Working Group that the minimum contribution of Members listed in Annexes I, II and III should be on a sliding scale with that of Members listed in Annex III being the highest.³⁸ It is anticipated that the amount of minimum contributions, including one-time contributions mentioned in Annex IV, would be an issue of operationalization, as those amounts would need to be calculated based on the budget of the Centre.

IV. Operationalization of the advisory centre

29. The Commission may wish to note that Working Group III acknowledged that the operationalization of the advisory centre would need further preparatory work. Accordingly, the Working Group made a number of recommendations (A/CN.9/1167, paras. 74–79) as summarized below.

30. First, the basis of the preparatory work should be the statute as adopted in principle by the Commission. The preparatory work could address issues such as: (i) ways to establish the advisory centre within the United Nations system based entirely on extrabudgetary resources; (ii) criteria to determine the location of the

³⁵ A/CN.9/1167, para. 69.

³⁶ A/CN.9/1167, para. 75.

³⁷ A/CN.9/1167, para. 71.

³⁸ A/CN.9/1167, para. 72.

headquarters and regional offices; (iii) anticipated budget based on membership and the workload and the need to ensure sustainable operation; (iv) amount of contributions by members of the advisory centre and methods of payment; (v) objective criteria to classify potential members in Annexes I to III; (vi) thresholds of membership and contributions for the entry into force of the statute; and (vii) decisions, rules and regulations to be adopted by the Governing Committee, including staff and financial regulations. The Commission may wish to identify other issues that require further preparatory work.

31. To facilitate the preparatory work, the Commission may wish to utilize an informal process involving States and regional economic integration organizations (REIOs) that are interested in becoming a member of the advisory centre. As an informal process, no decisions shall be made and efforts should be made to maintain transparency and inclusiveness of the process, by making the summary of the informal discussions available and possibly involving other observers of Working Group III. The informal process could be led by the bureau of the Commission and/or of Working Group III and would report back, as appropriate, to the Commission with recommendations for it to make any final decision.

32. Noting that the Government of Thailand had expressed an interest in hosting a meeting on the operationalization of the advisory centre, the Commission may wish to consider holding an informal meeting in Bangkok tentatively from 2 to 4 December 2024. The Secretariat may be requested to organize additional informal meetings, including virtually and at the margins of Working Group III sessions in 2024 and 2025.

33. Lastly, the Commission may wish to request that the Secretariat provides support for the preparatory work and the informal process, including the preparation of informal documents as well as providing partial travel support to participants from developing countries, subject to available resources.
