Draft Statute of the Multilateral Investment Court

by
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With the assistance of Angshuman Hazarika, Andrés Alvarado, Anna Holzer, Vishakha Choudhary, Afolabi Adekemi, Céline Braumann, and Sara Mansour Fallah.

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Foreword

This draft statute for a Multilateral Investment Court (MIC) is based on the study "*From Bilateral Arbitral Tribunals and Investment Courts to a Multilateral Investment Court*" which was first published in 2018. It is meant to stimulate discussion and to demonstrate that it is possible to devise a statute for a MIC without major hurdles. This proposal does not contend that the current system is not working or should be replaced; it merely demonstrates that it is possible to have a new one.

Every issue and problem addressed herein may be handled in different ways. The drafters of the statute seek to show what is possible on the basis of current debates, crystallizing in UNCITRAL, UNCTAD and other fora. The proposed articles of the statute may be amended and streamlined and are expected to be supplemented by the enactment of secondary rules.

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Preamble

The Parties to this Statute,

Considering the significance of robust investment relations for global economic development;

Bearing in mind the *consensus* achieved in the United Nations Commission on International Trade Law to develop solutions to concerns with investor-State dispute settlement;

Conscious of the need to devise a system which is subject to *democratic principles and scrutiny* and upholds the *rule of law* and the protection of *fundamental rights*;

Desiring to develop a system that facilitates *transparent* dispute settlement by *independent and neutral adjudicators* and ensures *consistent* application of substantive and procedural standards of investment protection;

Recognizing that an *accessible* and *procedurally efficient*, permanent investment court would serve the interests of investors, States and other stakeholders alike, and

Emphasizing the contributions that a multilateral dispute settlement mechanism can make to the *legitimacy*, coherence, and stability of investor-State dispute settlement,

Have agreed as follows:

Part I
Establishment of the Multilateral Investment Court

Article 1
Establishment of the Multilateral Investment Court

1. The Multilateral Investment Court ('the MIC') is hereby established.
2. The MIC is a permanent court in the form of an international organization. It shall exercise jurisdiction over all disputes related to the protection of investments referred to it in accordance with this Statute.

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Article 2
Seat of the MIC

1. The seat of the MIC shall be located in ### ('the Host State'). The proceedings of the MIC shall be held at the seat of the MIC except as hereinafter provided.
2. Proceedings may be held, if the parties so agree,
   (a) at the seat of the Permanent Court of Arbitration, of the International Centre for Settlement of Investment Disputes, or of any other dispute settlement institution with which the MIC may make arrangements for that purpose; or
   (b) at any other place approved by the MIC.
3. The MIC shall enter into a headquarters agreement with the Host State, as well as into seat agreements with other States, which shall be negotiated by the Director-General of the MIC. Subject to approval by the Plenary Body, such agreement will be concluded by the President of the MIC on its behalf.

Article 3
General Structure of the MIC

The MIC shall have the following organs:
(a) The Plenary Body
(b) The Court of First Instance
(c) The Appellate Court
(d) The Advisory Centre
(e) The Secretariat

Article 4
Membership of the MIC

1. The original Members of the MIC shall be the parties which sign the present Statute and ratify it in accordance with Articles 59 and 60.
2. States and other international entities, which have the power to enter into investment agreements, may accede to the MIC.
3. The Plenary Body shall approve accessions by a two-thirds majority of the Members of the MIC.

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Article 5
Legal Status and Powers of the MIC

1. The MIC shall have international legal personality and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The MIC shall exercise its functions and powers, as provided in this Statute, in the territory of each Member and, by special agreement, in the territory of any non-Member.

Article 6
Privileges and Immunities

1. The MIC shall be accorded such privileges and immunities as are necessary for the exercise of its functions. The privileges and immunities to be accorded by a Member to the MIC, its staff members, and the representatives of its Members shall correspond to those stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.
2. The judges of the MIC, the Director-General, and staff members of the MIC shall be immune during and after expiry of their terms of office from any legal proceedings regarding all acts conducted in connection with their duties.
3. In addition, the judges of the MIC and the Director-General shall enjoy the same immunity during their tenure on the MIC as enjoyed by the head of a diplomatic mission. This immunity may be waived only by an unanimous decision taken by a vote in a plenary of all judges of the MIC where immunity would impede the course of justice, and can be waived without prejudice to the interests of the Court. The judge whose immunity is under consideration will not be permitted to vote.

Article 7
Budget of the MIC

1. The annual budget of the MIC shall be prepared by the Director-General assisted by the Secretariat of the MIC in consultation with the President of the MIC.

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2. The annual budget shall be put forward and approved by the Plenary Body with a two-thirds majority in a session where more than half of the Members of the MIC are present and voting.
3. The annual budget shall be borne by the Members as apportioned by the Plenary Body for the particular year. The proportion of the contribution to the budget by a Member will be determined by taking the proportion of foreign direct investment outflow of the particular Member in relation to the total foreign direct investment outflow of all MIC Members. Members of the MIC may be permitted to pay a reduced contribution or may be fully exempted from the payment of their contribution subject to approval by a ### (simple/qualified) majority of the Plenary Body.

Part II
Composition of the MIC

Article 8
The Plenary Body

1. There shall be a Plenary Body composed of representatives of all the Members, which shall meet regularly and as appropriate to ensure the functioning of the MIC.
2. The Plenary Body shall carry out the functions assigned to it by this Statute. The Plenary Body shall establish its own rules of procedure and adopt or modify the Rules of Procedure for the Court of First Instance, the Appellate Court, the Advisory Centre, and the Secretariat.
3. The Plenary Body has the power to undertake necessary amendments of the Statute through consensus and pursuant to Article 63 *et seq*. to ensure the proper functioning of the MIC. It may also adopt interpretations of the Statute by consensus, which will be binding on the other organs of the MIC.
4. The Plenary Body shall adopt: a code of ethics and a code of conduct for the judges of the MIC, rules of conduct and ethics for all staff members, and regulations on procedure to be followed for the registration, allocation and conduct of proceedings before the Court of First Instance and the Appellate Court, transparency, costs and Court fees. These regulations will be drafted in accordance with the principles of the rule of law and will implement the UNCITRAL Rules of Transparency in Treaty-based Investor-State Arbitration.

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5. The Plenary Body may adopt any additional regulations or guidelines necessary for the functioning of the MIC and its organs.
6. The Plenary Body may form different committees as required to perform its functions.
7. Decisions on regulations concerning the procedure to be followed by the MIC must be approved by two-thirds majority when consensus cannot be reached.
8. The Plenary Body shall elect a Chairperson. The Chairperson has the administrative function of presiding over the meetings of the Plenary Body and will serve for two years.

Article 9
Judges of the MIC

1. The MIC shall comprise initially 24 judges in full time office, no two of whom may be nationals of the same State. A judge who is considered a national of more than one State shall be deemed to be a national of the State in which he or she ordinarily exercises civil and political rights.
2. The judges shall be persons of high moral character, enjoying the highest reputation for fairness and integrity with recognised competence in the fields of public international law, especially international investment law and international dispute settlement, administrative, commercial and constitutional law.
3. A judge of the MIC shall not exercise any political or administrative function, or engage in any occupation of a professional nature during his or her tenure at the MIC unless exemption is granted by the Plenary Body, acting by a simple majority.
4. The number of judges of the MIC may be amended by a two-thirds majority of the Members in the Plenary Body.

Article 10
The Advisory Centre

1. The Advisory Centre shall have a separate budget allocated by the Plenary Body. It shall operate independently from other organs of the MIC through staff members appointed by the Plenary Body.
2. The Advisory Centre may upon request provide legal assistance for disputes before the MIC to:

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(a) companies which are eligible for classification as Small and Medium Enterprises (SME) and
(b) all Members who are regarded as 'developing economies' pursuant to the Country Classification of the United Nations system.

3. The Advisory Centre may provide training on international investment law and further education to members of the MIC.
4. The Plenary Body shall draft rules, specifying the role of the Advisory Centre, its duties, and provisions on confidentiality in the internal functioning and publication of information by the Advisory Centre. The strict separation of responsibilities and information between the Advisory Centre and other bodies of the MIC must be ensured.
5. The Advisory Centre will cooperate with other international organizations and other entities working in similar areas as required to perform its functions.

Article 11
The Secretariat

1. The Secretariat of the MIC shall consist of staff members headed by a Director-General. The Secretariat may have internal departments as required to perform its functions.
2. The Plenary Body shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service and terms of office of the Director-General and staff members. The Director-General shall appoint the members of the staff of the Secretariat and determine their duties and conditions of service in accordance with the regulations adopted by the Plenary Body.
3. The Secretariat shall perform the administrative functions for the operation of the MIC. Its duties, functions, working procedures, and responsibilities shall be specified in detail by regulations on procedure adopted by the Plenary Body. The Secretariat may provide administrative and legal support to the judges of the MIC.
4. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the MIC. The Director-General and all staff members of the MIC shall refrain from any action, which might adversely reflect on their position as officials of an international organization. The Members of the MIC shall respect the international character of the responsibilities of the Director-General and of the staff

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of the Secretariat and shall not seek to influence them in the discharge of their duties.

Part III
The Judges, Court of First Instance, and the Appellate Court

Article 12
Nomination, Screening, and Election of Judges

1. Each Member of the MIC has the right to nominate candidates to a list for consideration to be elected as a judge of the MIC, through an internal selection procedure conducted by the Member.
2. The persons nominated to the list shall be evaluated by a sub-committee of the Plenary Body called the 'Screening Committee' for their suitability to be appointed as judges of the MIC on the parameters of professional qualifications, ethical standards, independence, and impartiality. The Screening Committee shall comprise seven persons chosen by the Plenary Body from among former judges of the MIC, members of national supreme and international courts, and lawyers of recognised competence. The Screening Committee may use additional criteria for the screening process as it deems fit and would seek to ensure that the persons who are finally selected represent the principal legal systems of the world.
3. The Screening Committee shall publish the names of the candidates who are eligible for election as judges of the MIC by classifying them in one of the following regional groups based on the nationality of the country which nominated them for the election: Asia, Africa, Latin America and the Caribbean, Western Europe and others, and Eastern Europe. The names will be published in an alphabetical order and each name will indicate the regional group which has the right to vote for the candidate.
4. The Members of a particular regional group in the Plenary Body will vote on the candidates eligible for election from their regional group with the aim to select an initial number of 15 judges, of which the following number of judges shall be chosen from each regional group:
   - Asia: ### judges
   - Africa: ### judges
   - Latin America and the Caribbean: ### judges
   - Western Europe and others: ### judges
   - Eastern Europe: ### judge

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5. In addition to the judges elected under paragraph 4 above, each regional group will be allotted a quota of judges out of the remaining nine MIC judges who shall be elected as provided under Article 12(1 - 4) of this Statute and subject to any amendment under Article 9(4). The number of judges which can be elected by a regional group will be commensurate with the number of MIC Members present in the regional group as a share of the total number of MIC Members.
6. Each Member of the MIC has one vote, which may be exercised in the election process for the judges of the MIC. Legal entities that are Members of the MIC can exercise their right to vote having a number of votes equal to the number of votes of their members which are Members of the MIC. Based on the number of votes received and the quota allotted to the regional group, the persons who receive the highest number of votes in a particular regional group will be selected as judges of the MIC.
7. The appointed judges will take an Oath of Office before the Plenary Body before the commencement of their tenure.

Article 13
Conditions of Service of Judges

1. All persons serving as judges at the MIC shall be available at all times and on short notice.
2. Judges of the MIC shall receive an annual salary. The President and the Vice-President shall receive a special annual allowance. These salaries, allowances, and compensation shall be fixed by the Plenary Body. They may not be decreased during the term of office.
3. The judges of the MIC shall be impartial and independent. They shall not take instructions from any organization or government with regard to matters related to any dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.
4. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their impartiality and independence. Each judge shall declare to the President of the MIC any such activity which will be disclosed to the disputing parties of each case.
5. No judge of the MIC may act as agent, counsel, or advocate in any investment dispute for a period of two years after retirement or resignation as a judge of the MIC. No judge of the MIC may participate in the

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adjudication of any case in which he or she has previously taken part as agent, counsel, or expert for one of the parties, or as a member of a national or international court, or in any other capacity. Any doubt concerning a direct or indirect conflict of interest shall be settled by decision of plenary of the judges of the MIC by an absolute majority of the judges. Where any such question concerns individual judges, these judges shall not take part in the decision.

Article 14
Duration of Appointment

1. The judges of the MIC shall be elected for a period of nine years without the possibility of re-election. Of the judges elected at the first election, the terms of eight judges shall expire at the end of three years and the terms of eight more judges shall expire at the end of six years. The judges whose terms are to expire at the end of three and six years shall be determined through a draw of lots to be conducted by the Chairperson of the Plenary Body immediately after the end of the first election.
2. The judges shall continue to hold office until they are replaced. They will, however, continue in office to complete any disputes that were under their consideration prior to their replacement unless they have been removed in accordance with Article 15(1) below.

Article 15
Resignation, Removal, and Replacement of Judges

1. A judge of the MIC may be removed from office in case of substantial misconduct or failure to perform his or her duties by an unanimous decision of all judges of the MIC except the judge under scrutiny.
2. A judge of the MIC may resign from his or her position through a letter addressed to the President of the MIC. A resignation of the President should be addressed to the most-senior Vice-President of the MIC as determined by age. The resignation shall become effective on the date of receipt by the President or the Vice-President.
3. In case of a judicial vacancy, the process of reappointment of judges will be conducted in the manner specified in Article 12 above, subject to the modification that only the group which elected the outgoing judge will be able to vote and elect a replacement in a special ad-hoc election.

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4. A judge who has been appointed as a replacement of another judge under this Article shall remain in office for a duration of nine years except for judges who are appointed as replacements for judges elected with a shorter period of three years or six years after the first election. Judges who are appointed as a replacement for a judge with a shorter term period as provided under Article 14(1) will be eligible for re-election for a full term.

Article 16
President of the MIC

1. The judges of the MIC shall elect a President of the MIC by a confidential internal voting procedure with each judge having one vote.
2. The President of the MIC shall be elected for a term of three years with the possibility of one re-election.
3. The President of the MIC shall not be eligible to nominate himself or herself as a judge of the Appellate Court but may serve in this capacity when nominated after the completion of his or her term as a President of the MIC. Judges appointed to the Appellate Court will be ineligible to be simultaneously elected as President of the MIC, but they will retain the power to participate and vote in the election process of the President of the MIC.
4. The President of the MIC shall chair all sessions of the plenary of the judges of the MIC, supervise the functioning of the Director-General and the Secretariat, assign individual judges to the chambers of the MIC and its Appellate Court, assign disputes to the chambers of the MIC and its Appellate Court, supervise administrative functions of the MIC, and represent the MIC in its external relations.
5. The assignment of judges to the chambers of the MIC and its Appellate Court and the assignment of disputes to the judges shall be governed by Rules of Procedure to be drafted by the Director-General with the assistance of the Secretariat and adopted by the Plenary Body. The President will consider criteria such as gender and regional diversity as well as diversity of expertise of legal systems and subject area in addition to the guidelines provided under the Rules of Procedure adopted by the Plenary Body while assigning the judges to the chambers of the MIC and the Appellate Court.
6. The senior-most Vice-President of the MIC will perform the duties of the President until his or her re-election or when he or she is unable to do so.

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Article 17
Chambers, Grand-Chambers, and Vice-Presidents of the MIC

1. The judges of the MIC shall be appointed to chambers with an odd number of judges to perform their judicial functions.
2. The President of the MIC shall assign disputes to a particular chamber while taking into consideration that disputes which have a particular Member or claimants that are nationals of a particular Member as a party shall not be referred to a chamber that has a judge having the nationality of the same Member or that the judge was originally nominated by.
3. Chambers with three or more judges shall select presiding judges of the chambers who shall also be Vice-Presidents of the MIC. The Vice-Presidents of particular chambers shall cease to perform that function when their chambers are reassigned, but may be eligible to be elected as Vice-Presidents of new chambers.
4. The President and the Vice-Presidents of the MIC will form the Grand Chamber of the MIC. A Vice-President who may no longer be holding the position due to a reassignment of chambers will remain a part of the Grand Chamber for all disputes which were commenced when he or she was a member of the Grand Chamber.
5. Upon determination by the Grand Chamber, all the judges of the Court of the First Instance may sit as a plenary to decide on disputes of substantial importance.

Article 18
Appellate Court

1. The President of the MIC shall appoint nine judges of the MIC to the Appellate Court of the MIC.
2. Judges appointed to the Appellate Court will remain judges of the Appellate Court for the remainder of their terms.
3. The judges of the Appellate Court will be appointed to chambers with an odd number of judges. Chambers with three or more judges will select a presiding judge of the chamber who will also be a Vice-President of the MIC. The Vice-President of a particular chamber will cease to perform that function when his or her chamber is reassigned, but may be eligible to be elected as a Vice-President of the new chamber.
4. The judges of the Appellate Court may sit in chambers or as a plenary body to decide on specific disputes assigned by the President of the

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MIC. One of the judges may be elected as an ad-hoc President of the plenary body of judges of the Appellate Court for the particular dispute through a secret vote of the judges of the plenary.

5. The ad-hoc President of the plenary of the Appellate Court shall chair the proceedings of the plenary of the Appellate Court and perform any administrative functions as required.

Part IV
Jurisdiction

Article 19
Scope of Jurisdiction

1. The jurisdiction of the MIC comprises all disputes arising directly out of an investment of a national of a Member in the territory of another Member, which the parties to the dispute refer to the MIC through consent in writing. When the parties have given their consent, no party may withdraw its consent unilaterally.
2. For the purpose of this Statute a 'national of another Member' means:
   (a) any natural person who had the nationality of a Member other than the Member which is a party to the dispute on the date on which the parties consented to submit such dispute to the MIC as well as on the date on which the request was registered pursuant to Article 44(2); and
   (b) any juridical person which had the nationality of a Member other than the Member which is a party to the dispute on the date on which the parties consented to submit such dispute to the MIC as well as on the date on which the request was registered pursuant to Article 44(2).
   (c) For the purposes of this Statute, a juridical person with the nationality of a Member shall be
      i. an enterprise that is constituted or organised under the laws of that Member and has substantial business activities in the territory of that Member, or
      ii. an enterprise that is constituted or organised under the laws of that Member and is directly or indirectly owned or controlled by a natural person of that Member or by an enterprise mentioned under paragraph (i).

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Article 20
Consent Requirement

1. A Member may express its consent to the jurisdiction of the MIC as required under Article 19(1) by communicating such consent in writing at the time of accession, acceptance or approval of this Statute. Unless otherwise stated, such consent shall extend to the dispute settlement provisions of the Agreements listed in Annexes X of this Statute, including future International Investment Agreements of Members to the MIC. The Agreements included in Annexes X shall form an integral part of this Statute and are binding on the respective parties to the Agreements.
2. A national of a Member may express its consent to the jurisdiction of the MIC by lodging a written request to initiate proceedings pursuant to Article 40.

Article 21
Jurisdiction over Investment Contracts

A Member and a national of another Member may consent in writing to submit to the jurisdiction of the MIC disputes arising out of an investment contract.

Article 22
State-to-State Disputes

1. Any legal disputes between Members of the MIC regarding the interpretation or application of the Agreements listed under Annexes of this Statute may be resolved through recourse to the MIC.
2. The applicable law for the resolution of any legal disputes arising under paragraph 1 shall be determined under the specific International Investment Agreement between the disputing Members.
3. Upon the parties' consent to the jurisdiction of the MIC pursuant to paragraph 1, such jurisdiction shall be exercised to the exclusion of any other remedy provided for in the specific International Investment Agreement between the disputing Members.

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Article 23
Exclusivity of Jurisdiction

1. Consent of the parties to the jurisdiction of the MIC shall be deemed consent to the exclusion of any other remedy. A Member may require the exhaustion of local administrative or judicial remedies as a condition to its consent to jurisdiction of the MIC under this Statute.
2. The MIC will have the exclusive jurisdiction to adjudicate any dispute arising out of an investment agreement between two States that are both Members of the MIC. Where any investment agreement between two Members of the MIC calls for recourse to Investor-State Arbitration, the Members agree to regard it as prescribing recourse to the MIC.

Article 24
Transitional Clauses

1. Any dispute settlement proceedings which would fall under the exclusive jurisdiction of the MIC, but have already commenced prior to the establishment of the MIC may be continued.
2. No dispute may be brought before the MIC if such dispute is already pending before another dispute resolution mechanism.

Article 25
Prohibition of Diplomatic Protection

No Member shall give diplomatic protection, or bring an international claim, in respect of a dispute to which one of its nationals and another Member have consented to submit or have submitted to the MIC under this Statute, unless such other Member has failed to abide by and comply with the decision rendered in the dispute.

Article 26
Jurisdiction Ratione Temporis

The MIC shall have jurisdiction over investment disputes arising after the entry into force of this Statute, unless a Member has consented in writing to jurisdiction over disputes, which arose prior to the entry into force of this Statute.

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Article 27
Additional Jurisdictional Requirements

The MIC does not have jurisdiction over disputes where the national of the other Member does not qualify as an investor as defined in the underlying International Investment Agreement, has not made an investment as defined in the underlying International Investment Agreement between the disputing parties, or does not fulfil other jurisdictional requirements of the underlying International Investment Agreement.

Part V
Procedure

Article 28
General Principles

1. The MIC establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Members in accordance with the principle of reciprocity and due process before an independent and impartial adjudicator. By performing their duties, the judges of the MIC shall:
   (a) adhere to the Rule of Law;
   (b) promote the transparency of the proceedings through application of the rules, *inter alia* on transparency, ethics and conduct which govern them;
   (c) ensure that the proceedings are carried out efficiently and expeditiously;
   (d) secure uniform and consistent interpretation of the law, taking into consideration previous decisions without establishing a doctrine of precedent, particularly where there exists sufficient uniformity in previous case law; and
   (e) take into account the Members' right to regulate.
2. The proceedings and functioning of all the organs of the MIC will adhere to the highest standards of the rule of law, transparency, and good governance. All proceedings shall be conducted in accordance with the provisions of this Part and, except as the parties otherwise agree, in accordance with the Rules of Procedure adopted by the Plenary Body in effect on the date of the proceedings.

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Section 1
General Rules

Article 29
Use of Languages

1. The official language of the MIC shall be English.
2. All communications by and with the disputing parties or their representatives, including oral and written submissions, shall be conducted in the official language of the MIC.
3. Should the underlying investment agreement provide a different language for the conduct of dispute settlement or the disputing parties so agree, the presiding judge of the chamber may authorise the use of a different language.
4. If such authorisation is granted, the Secretariat shall make the necessary arrangements for the interpretation and translation into English of the parties' oral and written submissions, in full or in part, where the presiding judge of the chamber considers it to be in the interests of the proper conduct of the proceedings.
5. Any witness, expert or other person appearing before the MIC may use another language if he or she does not have sufficient knowledge of the official language. In that event, the Secretariat shall make the necessary arrangements for interpretation and translation.
6. The extra costs for interpretation and translation will be allocated by the MIC to the disputing parties.

Article 30
Competence-Competence

1. The MIC shall be the judge of its own competence.
2. Any objection by a disputing party that a dispute is not within the jurisdiction of the MIC shall be considered and decided by the judges at any stage of the dispute. A plea that the MIC does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to (a counterclaim or) an additional claim, in the reply to the (counterclaim or to the) additional claim. A plea that the MIC is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the proceedings. The MIC may, in either case, admit a later plea if it considers the delay justified.

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Article 31
Applicable Law

1. The MIC shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the MIC shall apply such rules of international law as may be applicable.
2. The MIC may not submit a finding of *non liquet* on the ground of silence or obscurity of the law.
3. The provisions of paragraphs 1 and 2 shall not prejudice the power of the MIC to decide a dispute *ex aequo et bono* if the parties so agree. In such case, no recourse to the Appellate Court is available.

Section 2
Powers and Functions of the MIC

Article 32
Powers of the Judges

Judges may, if they deem it necessary at any stage of the proceedings:
(a) call upon the parties to produce documents or other evidence; and
(b) visit the scene connected with the dispute and conduct such inquiries there as it may deem appropriate.

Article 33
Default Decision

1. Failure of a party to appear or to present its case shall not be deemed an admission of the other party's assertions.
2. If a party fails to appear or to present its case at any stage of the proceedings, the other party may request the MIC to deal with the questions submitted to it and to render a decision. The MIC must satisfy itself, not only that it has jurisdiction, but also that the claim is well founded in fact and law. Before rendering a decision, the MIC shall notify and grant a period of grace to the party failing to appear or to present its case, unless it is satisfied or informed that that party does not intend to do so.

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Article 34
Additional Claims and Counterclaims

Except as the parties otherwise agree, the MIC shall, if requested by a party, determine any incidental or additional claims or counterclaims arising directly out of the subject-matter of the dispute.

Article 35
Provisional Measures

The MIC may, if it considers that the circumstances so require, order any provisional measures necessary to preserve the respective rights of either party.

Article 36
Proceedings under another International Agreement

Where a claim is simultaneously brought pursuant to this Statute and under another international agreement and:

(a) there is a potential for overlapping compensation; or
(b) the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Statute,

the MIC may, as soon as possible after hearing the disputing parties, stay its proceedings or otherwise ensure that proceedings brought pursuant to another international agreement are taken into account in its decision or order.

Article 37
Consolidation

1. When two or more claims that have been submitted separately to the MIC concern a common question of law or fact and arise out of the same events or circumstances, a disputing party or the disputing parties, jointly, may seek the establishment of a separate chamber of the MIC pursuant to this Article and request that such chamber issues a consolidation order ('request for consolidation').
2. The disputing party seeking a consolidation order shall first deliver a notice to all the disputing parties it seeks to be covered by this order.

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3. If the disputing parties notified pursuant to paragraph 2 have reached an agreement on the consolidation order to be sought, they may make a joint request for the establishment of a separate chamber of the MIC and a consolidation order pursuant to this Article. If the disputing parties notified pursuant to paragraph 2 have not reached agreement on the consolidation order to be sought within 30 days of the notice, a disputing party may make a request for the establishment of a separate chamber of the Court of First Instance and a consolidation order pursuant to this Article.
4. The request shall be delivered, in writing, to the President of the MIC and to all the disputing parties sought to be covered by the order, and shall specify:
   (a) the names and addresses of the disputing parties sought to be covered by the order;
   (b) the claims, or parts thereof, sought to be covered by the order; and
   (c) the grounds for the order sought.
5. A request for consolidation involving more than one respondent shall require the agreement of all such respondents.
6. The President of the MIC shall, after receipt of a consolidation request, constitute a new chamber ('consolidating chamber') of the MIC which shall have jurisdiction over some or all of the claims, in whole or in part, which are the subject of the joint consolidation request.
7. If, after hearing the disputing parties, a consolidating chamber is satisfied that claims submitted concern a common question of law or fact and arise out of the same events or circumstances, and consolidation would best serve the interests of fair and efficient resolution of the claims including the interest of consistency of decisions, the consolidating chamber of the MIC may, by order, assume jurisdiction over some or all of the claims, in whole or in part.
8. If a consolidating chamber of the MIC has assumed jurisdiction pursuant to paragraph 7, a claimant that has submitted a claim to the MIC and whose claim has not been consolidated may make a written request to the MIC that it be included in such order provided that the request complies with the requirements set out in paragraph 4. The consolidating chamber of the MIC shall grant such order where it is satisfied that the conditions of paragraph 7 are met and that granting such a request would not unduly burden or unfairly prejudice the disputing parties or unduly disrupt the proceedings. Before the consolidating chamber of the MIC issues that order, it shall consult with the disputing parties.

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9. On application of a disputing party, a consolidating chamber of the MIC established under this Article, pending its decision under paragraph 7, may order that the proceedings of unconsolidated chambers of the MIC addressed by the request of consolidation be stayed unless the former chamber has already adjourned its proceedings.
10. The unconsolidated chamber of the MIC shall cede jurisdiction in relation to the claims, or parts thereof, over which a consolidating chamber of the MIC established under this Article has assumed jurisdiction.
11. The decision of a consolidating chamber of the MIC established under this Article in relation to those claims, or parts thereof, over which it has assumed jurisdiction is binding on the unconsolidated chambers of the MIC as regards those claims, or parts thereof.
12. A claimant may withdraw a claim under this Section that is subject to consolidation and such claim shall not be resubmitted. If it does so no later than 15 days after receipt of the notice of consolidation, its earlier submission of the claim shall not prevent the claimant's recourse to dispute settlement other than under this Statute.
13. At the request of a claimant, a consolidating chamber of the MIC may take such measures as it sees fit in order to preserve the confidential or protected information of that claimant in relation to other claimants. Those measures may include the submission of redacted versions of documents containing confidential or protected information to the other claimants or arrangements to hold parts of the hearing in private. The consolidating chamber may adopt appropriate procedures for the consideration and transmission of such confidential information.

Article 38
Discontinuance

If, following the submission of a claim under this Statute, the claimant fails to take any steps in the proceeding during 180 consecutive days or such period as the disputing parties may agree, the claimant is deemed to have withdrawn its claim and to have discontinued the proceeding. The MIC shall, at the request of the respondent, and after notice to the disputing parties, in an order take note of the discontinuance. After the order has been rendered, the authority of the MIC shall lapse.

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Article 39
Withdrawal of a Claim

1. The parties may mutually decide or the claimant may unilaterally withdraw a claim at any stage of the proceedings before the Court of First Instance or the Appellate Court.
2. Any decisions which were under appeal before the Appellate Court will become final after withdrawal of the appeal as provided under Article 49 of this Statute.
3. The Court of First Instance or the Appellate Court may issue a decision of costs against the parties in case of a mutual withdrawal or against the claimant or appellant in case of a unilateral withdrawal.

Section 3
First Instance Proceedings

Article 40
Request to Initiate Proceedings

1. Any Member or any national of a Member wishing to institute proceedings at the MIC shall address a request to that effect in writing to the Secretariat which shall send a copy of the request to the other party.
2. The request shall contain information concerning the issues in dispute, the identity of the parties, and their consent to the jurisdiction of the MIC in accordance with the Rules of Procedure.
3. If a dispute resolution clause in the underlying International Investment Agreement provides for the completion of certain requirements before filing the request to initiate proceedings such as the observance of consultation periods, exhaustion of local remedies, or other similar procedures, the claimant must prove adherence to those requirements.
4. Upon receipt of the request to initiate proceedings, the Secretariat will inform the President of the MIC about the receipt of the claim and request an allocation of the claim. The President will then allocate the claim to a chamber while taking into account the guidelines prescribed regarding allocation of claims under this Statute and the rules framed under it.

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Article 41
Inadmissibility of a Claim

A claim by an investor is inadmissible if the investment was made through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.

Article 42
Time-Limits for Submission of a Claim

1. Claims have to be submitted to the MIC within one year of the dispute having arisen or, in case of recourse to local remedies, within one year of completion of any domestic legal or administrative proceedings regarding the dispute.
2. Except for any special agreements between the Members, no claims should be accepted by the MIC beyond a 10 year period after the alleged violation had taken place.

Article 43
Time-Limits for Court of First Instance

1. In order to make the procedures more efficient, the period in which the Court of First Instance shall conduct its proceedings, shall, as a general rule, not exceed six months.
2. When the Court of First Instance considers that it cannot issue its decision within six months, it shall inform the parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its decision. The period from the constitution of the chamber of the Court of First Instance to the issuance of the decision should not exceed nine months.

Article 44
Decision of First Instance and Formalities

1. The Court of First Instance shall generally hear disputes in chambers consisting of three judges.
2. Within 90 days of the assignment of a dispute by the President to a chamber, such chamber will decide whether the claim submitted is inadmissible, manifestly ill-founded or if there is a manifest lack of juris-

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diction. If the chamber determines that these criteria are fulfilled, it will dismiss the claim immediately. Otherwise, it will be registered and the proceedings will be commenced in the same chamber.

3. First Instance chambers shall decide questions by a majority of judges.
4. Notwithstanding paragraph 1, the disputing parties may agree that a dispute be heard by a sole judge to be appointed at random, unless such judge has the same nationality as one of the disputing parties or was nominated to the MIC by a Member who is also a disputing party. The respondent shall give consideration to a request from the claimant to have the dispute heard by a sole judge, in particular where the claimant is a small or medium-sized enterprise or the compensation or damages claimed are relatively low. Such a request shall be made to the President of the MIC at the time of submission of the claim through the Secretariat.
5. Decisions of the First Instance chambers shall be in writing and shall be signed by the judges who voted for it.
6. Decisions shall deal with every question submitted to the Court of First Instance and shall state the reasons upon which they are based.
7. Any judges of a First Instance chamber may attach their individual or joint dissenting or separate opinions or statements of dissent to the decision.

Article 45
Notification Decision of First Instance

1. The Secretariat shall promptly dispatch certified copies of the decision to the parties. The decision shall be deemed to have been rendered on the date on which the certified copies were dispatched.
2. The Court of First Instance, upon the request of a party made within 45 days after the date on which the decision was rendered, may after notice to the other party decide any question which it had omitted to deal with in the decision, and shall rectify any clerical, arithmetical or similar error in the decision. Its subsequent decision shall become part of the original decision and shall be notified to the parties in the same manner as the original decision.

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Section 4
Appellate Mechanism

Article 46
Grounds for Appeal

Either party may appeal the decision of a Chamber, Grand Chamber, or Plenary of the First Instance by an application in writing addressed to the Secretariat on one or more of the following grounds:

(a) that the MIC does not have jurisdiction to hear the dispute or that a claim is not admissible;
(b) that the First Instance has manifestly exceeded its powers;
(c) that there was corruption on the part of a judge of the First Instance;
(d) that there has been a serious departure from a fundamental rule of procedure;
(e) that the decision has failed to state the reasons on which it is based;
(f) that there are grave errors in the application or interpretation of applicable law; or
(g) that there are manifest errors in the appreciation of the facts, including the appreciation of the relevant domestic law.

Article 47
Appeal Procedure

1. The reasoned appeal must be submitted within 90 days after the date on which the decision was rendered. When appeal is submitted on the ground of corruption such application shall be made within 90 days after discovery of the corruption and in any event within three years after the date on which the decision was rendered.
2. The chamber of the Appellate Court constituted to hear the appeal shall generally consist of three judges randomly assigned by the President (Article 16(4 and 5)). Larger chambers or a plenary of Appellate Court judges may be called upon to decide on specific disputes which are deemed to be of high importance.
3. The Appellate Court may uphold, modify or reverse the decision of first instance or any part thereof.
4. The Appellate Court may, if it considers that the circumstances so require, stay the enforcement of the First Instance decision pending the appeal's decision. If a party requests a stay of enforcement of the First

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Instance decision in its application, enforcement shall be stayed provisionally until the Appellate Court rules on such request.

Article 48
Time-Limits for the Appellate Court

As a general rule, the proceedings at the Appellate Court shall not exceed 90 days from the date a party submits its appeal to the date the Appellate Court renders its decision. When the Appellate Court considers that it cannot provide its decision within 90 days, it shall inform the parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its decision. The proceedings shall not exceed 120 days.

Section 5
Final Decision

Article 49
Final Decision

1. A decision rendered pursuant to previous sections shall not be considered final and no action for enforcement of a decision may be brought until either:
   (a) 90 days from the issuance of the decision by the First Instance has elapsed and no appeal has been filed;
   (b) an initiated appeal has been rejected or withdrawn; or
   (c) the disputing parties are notified of the decision of the Appellate Court.
2. A final decision of the MIC has binding force between the parties and in respect of that particular case. It shall not be subject to any other remedy except those provided for in this Statute. Each party shall abide by and comply with the terms of the decision except to the extent that enforcement has been stayed pursuant to the relevant provisions of this Statute.

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Section 6
Revision of a Decision

Article 50
Revision

1. Either party may request revision of a final decision by an application in writing addressed to the Secretariat on the ground of discovery of a fact of such a nature that decisively affects the decision, provided that the fact was unknown to the MIC and to the applicant when the decision was rendered and that the applicant's ignorance of that fact was not wilful or due to negligence.
2. The application shall be made within 90 days after the discovery of such fact and in any event within three years after the date on which the decision was rendered.
3. The MIC may, if it considers that the circumstances so require, stay enforcement of its original decision pending its revised decision. If the applicant requests a stay of enforcement of a decision in its application, enforcement shall be stayed provisionally until the MIC rules on such request within three months.

Section 7
Challenge of Judges

Article 51
Procedure for Challenge of Judges

1. If a disputing party considers that a judge has a conflict of interest, it may submit a notice of challenge to the President of the MIC. Any notice of challenge shall be sent to the President of the MIC within 15 days of the date on which the names of the judges adjudicating the particular dispute have been communicated to the disputing party, or within 15 days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at an earlier stage. The notice of challenge shall state the grounds for the challenge.
2. If, within 15 days from the date of the notice of challenge, the challenged judge has elected not to step down from the particular dispute, after receiving submissions from the disputing parties and after providing the challenged judge an opportunity to submit any observations,

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the plenary of judges excluding the challenged judge will rule on the challenge by absolute majority in a reasoned decision.

Section 8
Other Provisions on Procedure

Article 52
Third Party Funding

1. In the event of third party funding, the disputing party benefiting from it shall disclose to the other disputing party and to the MIC the name and address of the third party funder.
2. The disclosure shall be made at the time of the submission of a claim, or, if the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.

Article 53
Determination of Appropriate Respondent

1. The judges of the MIC will consider any internal arrangements made by international organizations which represent multiple Members regarding the allocation of responsibility arising from a claim against a Member State of the organization or the organization itself.
2. The judges of the MIC may seek an opinion from an international organization regarding the allocation of responsibility between the organization and its members in respect of a claim. The final decision passed by the chambers of the Court of First Instance or the Appellate Court will reflect the arrangement made by the Member State and the international organization regarding the distribution of responsibilities.
3. If no arrangement is made by the international organization and its Member States within the specified period of time, then the First Instance or Appellate Court may choose to issue a decision requiring the international organization assume responsibility under the decision.

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Article 54
Determination of Costs

The charges payable by the disputing parties for the use of the facilities of the MIC shall be determined by the MIC, according to the Regulations on Costs established by the Plenary Body.

Article 55
Experts and Third Parties

1. The Court of First Instance and the Appellate Court may consult experts to deal with questions regarding specialised areas.
2. After consultation with the disputing parties, the Court of First Instance may accept and consider written *amicus curiae* submissions regarding a matter of fact or law within the scope of the dispute that may assist the Court in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant or public interest in the proceedings. Each submission shall identify the author, disclose any affiliation, direct or indirect, with any disputing party, and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in the language of the arbitration and comply with any page limits and deadlines set by the tribunal. The Court shall provide the disputing parties with an opportunity to respond to such submissions and it shall ensure that the submissions do not disrupt or unduly burden the proceedings, or unfairly prejudice any disputing party.

Part VI
Enforcement

Article 56
Enforcement within MIC Members

1. Each Member of the MIC shall recognise a decision rendered pursuant to this Statute as binding and enforce the pecuniary obligations imposed by that decision within its territories as if it were a final judgment of a court in that State or international entity. A Member of the MIC with a federal constitution may choose to enforce such a decision

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in or through its federal courts and may provide that such courts shall treat the decision as if it were a final judgment of the courts of a constituent State or international entity.

2. A party seeking recognition or enforcement in the territories of a Member of the MIC shall furnish to a competent court or other authority which such Member shall have designated for this purpose a copy of the decision certified by the Director-General. Each Member of the MIC shall notify the Director-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.
3. Execution of a decision shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.
4. Third States which are not Parties to this Statute may commit themselves to recognise and enforce decisions rendered by the MIC in accordance with the rules set out in this Statute. The declaration of commitment may be made at any time to the Secretariat of the MIC.

Article 57
Enforcement in Non-MIC Members

The enforcement of MIC decisions in non-MIC Members will be governed by a separate treaty. The MIC Members are working towards the creation of such a treaty and are seeking to encourage the accession of third parties to that treaty in their international relations.

Article 58
Enforcement Fund

1. A fund for the enforcement of MIC decisions ('the Fund') is hereby established. The Fund shall be governed by administrative regulations to be adopted by the Plenary Body.
2. Upon accession to the MIC, MIC Members are obliged to contribute to the Fund. The minimum contribution will be determined by the Plenary Body.
3. In accordance with the administrative regulations governing the Fund, the Fund shall satisfy an MIC Member's obligation under an MIC decision by payment to a successful claimant up to a sum of XXX USD per

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case upon request, if the claimant can demonstrate need for urgency of immediate payment of an awarded sum.

4. Upon satisfying or agreeing to satisfy a Member's obligation under an MIC decision by payment to the benefitting claimant, the MIC shall be subrogated to such rights or claims related to the respective decision as the holder of the decision may have had against the Member and other obligors. The subrogation shall be effected in the form of assignment.

Part VII
Final Provisions

Article 59
Signature

This Statute shall be open for signature on behalf of the entities mentioned in Article 4 and in accordance with the procedure thereunder.

Article 60
Ratification and Accession

This Statute shall be subject to ratification or accession by the entities referred to in Article 4 in accordance with their respective constitutional procedures. The instruments of ratification or accession shall be deposited with the Depository who shall transmit certified copies to all Members.

Article 61
Entry into Force

1. This Statute shall enter into force ### months after the date of deposit of the fortieth instrument of ratification.
2. For each Member acceding to this Statute after the deposit of the fortieth instrument of ratification or accession, the Statute shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.
3. Upon its entry into force, each Member shall take such legislative or other measures as may be necessary for making the provisions of this Statute effective in their relations with other Members.

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Article 62
Relation to other International Agreements

This Statute shall not alter the rights and obligations of Members which arise from other agreements compatible with this Statute and which do not affect the enjoyment by other Members of their rights or the performance of their obligations under this Statute.

Article 63
Amendment of the Statute

1. A Member may propose amendments to this Statute and request their consideration in the Plenary Body by written communication addressed to the Director-General, who shall promptly circulate such communication to all other Members.
2. If a majority of the Members reply favorably to the request within three months from the date of the circulation of the communication, the proposal shall be deliberated in the Plenary Body.
3. The Plenary Body should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted. The adoption of an amendment on which consensus cannot be reached shall require a two-thirds majority of Members in the Plenary Body.

Article 64
Entry into Force of Amendments

1. Each amendment shall enter into force 30 days after its adoption by the Plenary Body.
2. A Member which becomes a Party to this Statute after the entry into force of an amendment in accordance with paragraph 1 shall be considered as a Party to this Statute as so amended.
3. No amendment shall affect the rights and obligations under this Statute of any Member or of any of its constituent subdivisions or agencies, or of any national of such Member arising out of consent to the jurisdiction of the MIC given before the date of entry into force of the amendment.

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Article 65
Review of the Statute

1. 10 years after the entry into force of this Statute, the Chairperson shall convene a conference, hereinafter referred to as Review Conference, to consider any amendments to this Statute.
2. At any time thereafter, at the request of a Member and for the purposes set out in paragraph 1, the Chairperson shall, upon approval by a majority of the Plenary Body, convene a Review Conference.
3. The provisions of Articles 63 and 64 shall apply to the adoption and entry into force of any amendment to the Statute considered at a Review Conference.

Article 66
Denunciation

1. A Member may, by written notification addressed to the Depositary, denounce this Statute and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
2. A Member shall not be discharged by reason of the denunciation from the financial and contractual obligations which accrued while it was a party to this Statute.
3. Denunciation of this Statute shall not affect any rights or obligations of that Member created through the execution of this Statute prior to its termination for that Member.

Article 67
Status of Annexes

The Annexes form an integral part of this Statute and, unless expressly provided otherwise, a reference to this Statute or to one of its Parts includes a reference to the Annexes relating thereto.

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Article 68
Depositary

The Director-General shall be the depositary of this Statute and of the instruments of ratifications or accessions and amendments thereto. In exercise of his or her functions as a depositary, the Director-General shall:

(a) notify the Members of the date on which this Statute enters into force in accordance with Article 61;
(b) register this Statute with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly;
(c) notify the Members of signatures and deposits of instruments of ratifications and accessions to this Statute in accordance with Articles 59 and 60 respectively;
(d) circulate amendments adopted in accordance with this Statute to Members for ratification or accession in accordance with Article 63;
(e) notify the Members of the date on which any amendment of this Statute enters into force in accordance with Article 64; and
(f) notify the Members of any denunciations of this Statute in accordance with Article 66.

Article 69
Authentic Texts

The original of this Statute, of which the _____ texts are equally authentic, shall remain deposited with the Director-General, who shall send certified copies thereof to all Members.

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