

Comparative Costs and Financing of Permanent Dispute Settlement Mechanisms

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Academic Forum on ISDS Concept Paper 2022

Version 07.06.2022

Citation: Catharine Titi, Freya Baetens, Robert Howse, Marcin J. Menkes, Walter Elochukwu Abah, 'Comparative Costs and Financing of Permanent Dispute Settlements Mechanisms', *Academic Forum on ISDS Concept Paper 2022/1*, 7 June 2022.

Academic Forum on ISDS Website:

www.jus.uio.no/pluricourts/english/projects/leginvest/academic-forum/

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Comparative Costs and Financing of Permanent Dispute Settlement Mechanisms

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ISDS Academic Forum Concept Paper 2022/1

1. Introduction

In the 40th session of UNCITRAL Working Group III in February 2021, the Secretariat was requested to provide insights into the costs of standing dispute settlement mechanisms.¹ In that context, the Academic Forum undertook the commitment to provide a comparative analysis of the costs of existing standing dispute settlement mechanisms, especially international courts.

In contrast with arbitration, where the disputing parties bear both their own costs (that is, the fees and expenses of counsel, experts, and witnesses) and tribunal costs (that is, the fees and expenses of arbitrators and arbitral institutions),² in international courts the disputing parties still have to defray their own litigation costs³ but do not bear the expenses of the court.⁴ International courts tend to be funded by assessed contributions of the court's membership or by assessed contributions of the membership of the overarching organisation.⁵ So, the General Assembly of the United Nations (UNGA) regularly adopts an assessment scale measured, inter alia, on the capacity-to-pay principle, which relies primarily on gross national product (GNP) estimates, adjusted for factors such as external debt and per capita income.⁶ Other international

¹ UNCITRAL, Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its fortieth session (Vienna, 8–12 February 2021), UN Doc No A/CN.9/1050 (17 March 2021), para 115.

² Gabriel Bottini and others, 'Excessive Costs and Recoverability of Cost Awards in Investment Arbitration' (2020) 21(2-3) *Journal of World Investment & Trade* 251, 255.

³ Eg see Statute of the International Court of Justice (ICJ) art 64.

⁴ Thordis Ingadottir, 'The Financing of International Adjudication' in Cesare PR Romano, Karen Alter, and Yuval Shany (eds) *The Oxford Handbook of International Adjudication* (Oxford University Press 2013) 601.

⁵ *ibid.*

⁶ *ibid* 602.

organisations have sometimes based their scale of assessment on the United Nations scale.⁷ Additionally, international courts are also funded from voluntary contributions.⁸

Different dispute settlement bodies have different budgets. These depend on a number of factors, including the functions of the dispute settlement body in question (eg the costs of international criminal courts include the costs of the work of the office of the prosecutor);⁹ the number of judges and the manner of their remuneration (eg while judges at the International Court of Justice receive a fixed annual salary,¹⁰ judges at the International Tribunal for the Law of the Sea (ITLOS) receive an annual allowance and for the remainder of their recompense are remunerated according to the time they serve on the Tribunal);¹¹ the body's membership and capacity to fund; and the extent to which the dispute settlement body relies on voluntary contributions.¹²

For the purposes of this concept paper, we have elected to address the comparative costs and financing of the following permanent dispute settlement mechanisms: the ICJ; ITLOS; the Dispute Settlement Body (DSB) of the World Trade Organization (WTO); the International Criminal Court (ICC); the three regional human rights courts, that is the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights; and the Iran-US Claims Tribunal (IUSCT). For each dispute settlement body, we address, first, the costs involved in its functioning and what is covered by the funding and, second, who finances the body. Instead of a conclusion, the paper presents a summary table of costs and financing of a selection of the above permanent dispute settlement bodies. In the interests of comparison, the table adds the costs and financing of the International Centre for Settlement of Investment Disputes (ICSID).

⁷ *ibid.*

⁸ Eg see Rome Statute of the International Criminal Court (ICC) art 116; text to n 52, in relation to the Inter-American system for the protection of human rights. Exceptionally, the Special Court for Sierra Leone, not examined in this paper, became the first court to be funded only by voluntary contributions, see Thordis Ingadottir, 'The Financing of International Adjudication' in Cesare PR Romano, Karen Alter, and Yuval Shany (eds) *The Oxford Handbook of International Adjudication* (Oxford University Press 2013) 604.

⁹ Thordis Ingadottir, 'The Financing of International Adjudication' in Cesare PR Romano, Karen Alter, and Yuval Shany (eds) *The Oxford Handbook of International Adjudication* (Oxford University Press 2013) 610.

¹⁰ See <https://www.icj-cij.org/en/members>.

¹¹ See <https://www.itlos.org/en/main/general-information/finances/>.

¹² Thordis Ingadottir, 'The Financing of International Adjudication' in Cesare PR Romano, Karen Alter, and Yuval Shany (eds) *The Oxford Handbook of International Adjudication* (Oxford University Press 2013) 605.

1. International Court of Justice

i. Costs

The ICJ's budget for 2021, as adopted by the General Assembly, is divided into three categories.¹³ The first category relates to Members of the Court, consisting of non-staff¹⁴ compensation (USD 8,044,200), experts (USD 73,100) and travel (USD 17,300), amounting to a subtotal of USD 8,134,600. The second category relates to the Registry, consisting of posts (USD 16,465,500), other staff costs (USD 1,643,700), hospitality (USD 22,500), consultants (USD 16,200), travel (USD 23,700), contractual services (USD 121,300) and grants and contributions (USD 153,600), amounting to a subtotal of USD 18,446,500. The third and final category is Programme Support, consisting of contractual services (USD 1,341,000), general operating expenditure (USD 2,270,000), supplies and materials (USD 376,800) and furniture and equipment (USD 209,900), amounting to USD 4,197,700. This brings the ICJ's total budget for 2021 to USD 30,778,800.

By comparison, the total budget for 2020 was USD 28,145,500.¹⁵ For the biennium 2018-2019, the total budget was USD 51,737,100 (so approximately USD 25,868,550 per annum).¹⁶ This development would seem to indicate an annual increase of approximately 10%.

ii. Who finances?

In accordance with Article 33 of the Statute of the Court, the expenses of the Court are to be borne by the United Nations in such a manner as is decided by the General Assembly. As the budget of the Court has been incorporated in the budget of the United Nations, Member States participate in the expenses of both in the same proportion, in accordance with the scale of assessments decided by the Assembly.¹⁷

¹³ Source: <https://www.icj-cij.org/en/annual-reports> (most recent version: 2020-2021) p. 45.

¹⁴ Members of the Court (ICJ judges) are not considered staff.

¹⁵ Source: <https://www.icj-cij.org/en/annual-reports> (most recent version: 2020-2021) p. 44.

¹⁶ Source: <https://www.icj-cij.org/public/files/annual-reports/2019-2020-en.pdf>, p. 46.

¹⁷ Source: <https://www.icj-cij.org/en/annual-reports> (most recent version: 2020-2021) para. 221.

In accordance with Articles 24 to 28 of the revised Instructions for the Registry, a preliminary draft budget is prepared by the Registrar. This preliminary draft is submitted for the consideration of the Budgetary and Administrative Committee of the Court, and then to the full Court for approval.¹⁸

Once approved, the draft budget is forwarded to the Secretariat for incorporation in the draft budget of the United Nations. It is then examined by the Advisory Committee on Administrative and Budgetary Questions and is subsequently submitted to the Fifth Committee of the General Assembly. Lastly, it is adopted by the Assembly in plenary meeting, within the framework of decisions concerning the budget of the Organization.¹⁹

The accounts of the Court are audited by the Board of Auditors appointed by the General Assembly. At the end of each month, the closed accounts are forwarded to the United Nations Secretariat.²⁰

2. The International Tribunal for the Law of the Sea

i. Costs

The ITLOS *biennial* budget for 2021-2022 (that is, covering a period of two years), as approved at the Meeting of States Parties, is divided into three categories.²¹

The first category relates to recurrent expenditures. It covers costs for judges (including annual allowances, special allowances, travel to sessions) (EUR 4,812,200), the judges' pension scheme (EUR 1,969,200), staff costs (EUR 8,748,600), representation allowance (EUR 13,400), official travel (EUR 185,000), hospitality (EUR 14,700), operating expenditures (including maintenance of premises and security, rental and maintenance of equipment, etc) (EUR 3,405,700), and library and related costs (348,000). The second category relates to non-recurrent expenditures and covers costs for furniture and equipment (EUR 157,500). The third

¹⁸ Source: <https://www.icj-cij.org/en/annual-reports> (most recent version: 2020-2021) para. 223.

¹⁹ Source: <https://www.icj-cij.org/en/annual-reports> (most recent version: 2020-2021) para. 224.

²⁰ Source: <https://www.icj-cij.org/en/annual-reports> (most recent version: 2020-2021) para. 226.

²¹ Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/082/97/PDF/N2008297.pdf?OpenElement> annex I.

category relates to case-related costs and it covers additional costs for judges (such as compensation to judges ad hoc) (EUR 3,273,400) and staff costs (temporary assistance for meetings and overtime) (EUR 1,227,300).

This brings ITLOS's total budget for the biennium 2021-2022 to EUR 24,155,000 (EUR 12,077,500 per year).²² By comparison, the total budget for the biennium 2019-2020 was EUR 20,412,400 (10,206,200 per year), i.e. there was an increase of EUR 3,891,200 for the two years, or an increase of nearly 20%.

ii. Who finances?

Pursuant to Article 19(1) of the Statute of ITLOS, the expenses of the Tribunal are borne by the States Parties and by the International Seabed Authority, according to the terms decided at Meetings of the States Parties.

The Meeting of States Parties decided for the period 2021-2022 that, 'without prejudice to the application of the provisions of article 19 of annex VI to the United Nations Convention on the Law of the Sea in respect of future budgets of the Tribunal regarding the contribution to be made by the International Seabed Authority, the budget of the Tribunal for the period 2021–2022 will be financed by all States parties taking into account that the European Union indicated that its agreed contribution to the budget of the Tribunal would be EUR 110,000 for each year'.²³ The Meeting of States Parties further decided that 'a floor rate of 0.01% and a ceiling rate of 22% are to be used in establishing the rate of assessment of States parties for the budget of the Tribunal'.²⁴

²² Source:
<https://undocs.org/Home/Mobile?FinalSymbol=splos%2F30%2F17&Language=E&DeviceType=Desktop>.

²³ Source:
<https://undocs.org/Home/Mobile?FinalSymbol=splos%2F30%2F17&Language=E&DeviceType=Desktop>.

²⁴ Source:
<https://undocs.org/Home/Mobile?FinalSymbol=splos%2F30%2F17&Language=E&DeviceType=Desktop>.

3. Dispute Settlement Body of the World Trade Organization

As established in the Dispute Settlement Understanding that was negotiated in conjunction with the Uruguay Round that created the WTO, the WTO dispute settlement system is designed to provide two level of adjudication – ad hoc panels are the first instance, with appeals (restricted to legal issues) heard by a standing Appellate Body of seven jurists, appointed for four-year terms, renewable once. As is widely known, the refusal of the United States under the Trump Administration to allow new appointments (which requires a consensus decision of the membership) to fill a vacancy has rendered the AB non-functional. The Biden Administration has not made a clear decision to enable the restaffing of the AB, but it remains a fundamental part of the legal architecture of the WTO.

Dispute settlement is integrated into the WTO as an institution. Thus, all of the costs, from administration and physical facilities for hearings to the compensation of adjudicators are paid out of the general WTO budget, in which however are specific heads for dispute settlement. The Legal Affairs division of the WTO Secretariat provides legal research assistance and legal advice to the panels of first instance, a significant function as a large number of panelists are not active legal professionals (many are diplomats or non-legally trained government officials). The Appellate Body has its own Secretariat that performs these functions.

i. Costs

A recent WTO Secretariat document²⁵ gives further detail on the compensation structure for adjudicators.

- a. a retainer of CHF 9,085 per month;
- b. an administrative allowance of CHF 330 per month;
- c. a daily fee of CHF 783 per day for each day of Appellate Body work.
- d. a daily subsistence allowance (currently CHF 374), for each day that the Member is required to be in Geneva?; and
- e. a contribution to the cost of health insurance of CHF 211.20 per month (if applicable).

²⁵ Committee on Budget, Finance and Administration, Office of Internal Oversight (OIO), Report to the CBFA on the Review of Appellate Body Members' and Panelists' Costs, Doc No WT/BFA/W/515 12 March 2020 <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:WT/BFA/W515.pdf&Open=True>.

f. reimbursement of travel expenses for meetings in Geneva.

With respect to ad hoc panelists, the first instance in the WTO, the same document details that remuneration for panelists for non-Governmental Panelists is CHF 900 per full day of work. Panelists employed by a government (or an international or inter-governmental organization) are entitled to receive CHF 300 per day of work, as long as their Government/Employer authorizes them to receive such remuneration. Panelists based outside Geneva are entitled to a Daily Subsistence Allowance (DSA – CHF 374 in November 2019) for the time spent in Geneva attending Panel meetings. Travel costs between the place of residence of the Panelists and Geneva (i.e. airline or train tickets) are usually paid directly by the WTO (or, on exceptional occasions, reimbursed to the Panelists). Panelists are expected to spend around 15 working days in Geneva. However, the number of days spent in Geneva may differ depending on the complexity of the issues covered by the Panel.

In terms of legal and operational assistance provided to the ad hoc panelists of first instance by the Legal Affairs division of the Secretariat, the division in 2019 had 36 full time employees of various professional and administrative ranks, representing approximately 6% of the total number of staff of the Secretariat as a whole.²⁶ The total budget for all staff (compensation including benefits) in 2020 was CF 131,400,000. Assuming that staff costs in Legal Affairs are comparable to other parts of the Secretariat (there are only a few pay grades throughout the WTO) one could attribute about CF 7-8 million to the Legal Affairs division. The bulk but not all the activities of the division are support for dispute settlement. There may be up to several dozen disputes that are open or active in any given year that may require resources from the Legal Affairs division. It does not seem that there is a publicly available breakdown of the costs of physical facilities, telecommunications, etc, attributable to dispute settlement. All activities including hearings are housed within the general headquarters complex of the WTO in Geneva.

ii. Who finances?

Individual WTO Members contribute to the budget according to a formula based on their share of world trade. The only costs borne by parties to the dispute *qua* parties are those of presenting

²⁶ WTO Secretariat, 2020 Annual Report, p. 174.

their case (legal counsel, experts, etc.) before the dispute settlement organs. As Joost Pauwelyn summarizes:

The expenses and compensation of all panelists, as well the costs incurred by the secretariat staff in assisting panels, are paid out of the WTO budget. The disputing parties themselves do not pay anything other than their regular contribution to the WTO budget. All AB expenses and compensation also come out of the WTO budget. AB members are not employed full time; they do not normally live in Geneva; and most continue to do other work (academic or private sector, including, for some of them, sitting on ICSID arbitrations). Their travel and subsistence (per diem) while in Geneva are paid, plus compensation for days worked and a monthly retainer (7,000 CHF/month). Since AB members are not WTO staff, they do not participate in the WTO pension plan.²⁷

4. The International Criminal Court

i. Costs

The States Parties' approved budget of the International Criminal Court's (ICC) for the year 2021 is EUR 148,259,000²⁸ which represents about EUR 0.7 million or a 0.5% decrease when compared to the 2020 approved budget of EUR 149,205,600.²⁹ The decrease in the 2021 appropriations is the Court's commitment to demonstrate sensitivity to global economic pressure due to the Covid-19 pandemic. The 2021 approved budget of the Court covers the following nine major programmes: the Judiciary (the Presidency and Chambers), the Office of the Prosecutor, the Registry, the Secretariat of the Assembly of States Parties, Premises, the Secretariat of the Trust Fund for Victims, Permanent Premises Project-Host State Loan, the Independent Oversight Mechanism and Office of Internal Audit.³⁰

The breakdown of the specifics covered by the budget is as follow: benefits of 18 judges with a nine-year fixed term contract (EUR 4,711,100), professional staff (EUR 64,587,200), general

²⁷ Joost Pauwelyn, 'The Rule of Law without the Rule of Lawyers: Why Investment Arbitrators Are from Mars, Trade Adjudicators from Venus' (2015) 109 *American Journal of International Law* 761, 790-791.

²⁸ Source: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/ICC-ASP-20-10-ENG.pdf, p. 16.

²⁹ Source: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/ICC-ASP-19-INF3-ENG.pdf, p. 6.

³⁰ *Ibid.*

service staff (EUR 25,005,500), general temporary assistance (EUR 18,648,300), temporary assistance for meetings (EUR 511,800), temporary assistance overtime (EUR 237,200), travel (EUR 4,096,900), hospitality (EUR 28,000), contractual services (EUR 4,056,000), training (EUR 624,800), consultants (EUR 627,200), counsel for defence (EUR 3,943,700), counsel for victims (EUR 1,727,100), general operating expenses (EUR 14,026,500), supplies and materials (EUR 1,111,000), furniture and equipment (EUR 731,600) and host state loans (EUR 3,585,100).³¹

The Court's proposed budget of EUR 162,346,000 for 2022, however, shows a slight increase of about 9.5% over the approved budget for 2021. The increase is attributable to requirements to support developments in prosecutorial and judicial activities, lessons learned from the Covid-19 pandemic, and multiple improvement exercises of the Court.³²

ii. Who finances?

Pursuant to Article 115 of the Rome Statute of the ICC, the expenses of the Court are financed by the assessed contributions made by States Parties and funds provided by the UN in relation to costs incurred due to referrals by the Security Council under Chapter VII of the UN Charter. Article 117 of the Rome Statute provides that assessment of the sum payable by each State Party shall be in accordance with a scale agreed to by the States Parties based on the scale of assessments adopted by the UN for its regular budget and adjusted on the basis of the principles of the UN scale. The principles for the UN scale of assessment for the period from 2019 to 2021 include, among others, estimates of members' gross national income, a minimum assessment rate of 0.001%, a maximum assessment rate for the least developed countries of 0.01%, and a maximum assessment rate of 22%.³³

Also, by virtue of Article 116 of the Rome Statute, the expenses of the Court can be financed through voluntary contributions from governments, international organizations, individuals, corporations, and other entities.

³¹ Source: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/ICC-ASP-20-10-ENG.pdf, p. 16.

³² Ibid, pages 8-9.

³³Source: UN General Assembly Resolution A/Res/73/271 adopted on 22 December 2018, available at: <https://undocs.org/en/A/RES/73/271>, p. 2.

As of 31 December 2020, the total contributions by States Parties amounted to EUR 128,088,541 with the bulk of the contributions above EUR 5 million coming from Australia (EUR 5,876,461), South Africa (EUR 5,706,356), Republic of Korea (EUR 6,258,761), Canada (EUR 7,269,812), Ireland (EUR 8,7993,501), United Kingdom (EUR 12,143,931), France (EUR 12,566,339), Germany (EUR 16,193,649) and Japan (EUR 24,311,100).³⁴

The voluntary contributions for the Court as of 31 December 2020 amounted to EUR 1,676,327, mainly from the governments of States Parties and international organizations.³⁵

5. European Court of Human Rights

i. Costs

The ECHR budget for 2020 amounts to EUR 74,169,000. The budget plan for 2021 amounts to EUR 73,994,300.³⁶ The latter is lower because no voluntary contributions had been secured by the time of the biannual financial planning.

The principal part of the budget covers 47 judges and staff salaries including 601 members of the Secretariat (ca. EUR 69,790,000, i.e. almost 95% of the budget). The remainder covers operational expenditures (information technology including webcasting of public hearings, official journeys, caselaw and training materials translation, interpretation, publications, representational expenditure, legal aid, fact-finding missions etc.). Importantly, expenditures on the building and infrastructure (telephone, cabling etc.) are not included in the ECHR budget.

The total ECHR budget for 2018 amounted to EUR 69,959,000 and rose to EUR 70,221,000 in the subsequent year.³⁷

³⁴ Source: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/ICC-ASP-20-12-ENG.pdf, p. 45-46.

³⁵ Ibid, page 53.

³⁶ ECHR Budget 2021 https://www.echr.coe.int/Documents/Budget_ENG.pdf.
COUNCIL OF EUROPE PROGRAMME AND BUDGET 2020-2021, <https://rm.coe.int/1680994ffd#page=2>

³⁷ Council of Europe Programme and Budget 2018-2019, <https://rm.coe.int/council-of-europe-programme-and-budget-2018-2019/16807761cd>.

While assessing the growing budget of the ECHR, one should take into account that the ECHR has faced a backlog of cases for many years. This problem could be mitigated by allocating more resources, but there is no political agreement to do so. As a result, on the one hand, the Court seeks additional resources to deal with the growing number of cases it opens. On the other hand, a number of measures – ranging from procedural changes to investments in electronic communication – are being taken to streamline proceedings before the Court and reduce the backlog.

ii. Who finances?

The Council of Europe Programme and Budget is approved by the Committee of Ministers upon proposal by the Secretary General, who is responsible for the sound administrative and financial management of the Organisation.³⁸ The Budget Committee assists the Committee of Ministers in fulfilling its mandate in financial matters (Article 25 of the Financial Regulation). The Programme and Budget is an integrated document approved for the biennium (with the second year budget on a provisional basis). The Programme sets out Council of Europe's objectives for the biennium, along with expected results and performance indicators and the Budget authorises the budgetary receipts and budgetary expenditure of the Organisation (Article 3(2) of the Financial Regulation).

The ECHR budget is financed from two sources. The most important contribution comes from the 47 Member States of the Council of Europe. In 2020, they covered 98.5% of the costs. The national contributions formula combines factors such as population and gross domestic product (GDP).³⁹ The major contributors (France, Germany, Italy, and the United Kingdom⁴⁰) pay the same contribution to the ordinary budget. If necessary, the Secretary General may submit proposals for supplementary appropriations (Article 22 of the Financial Regulation). Council

³⁸ Statute of the Council of Europe, art. 20 (a, d), 38(c). Financial Regulations and Supplementary Provisions of the Council of Europe, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c2280, art. 2.

³⁹ According to the Statute art. 38 (b), common expenses are shared between all members in such proportions as shall be determined by the Committee 'on the basis of the population of members'. Financial Regulation art. 8(2) highlights the Committee of Ministers' power to apportion obligatory contributions, while skipping the criterion of population.

⁴⁰ The list should also include the Russian Federation, which ceased its payments in June 2017. [But started again, I think you said?]

of Europe Member States also make contributions in kind to the Court's budget including through secondment of staff, translation services, and tax exemptions.⁴¹

Additionally, governments may make voluntary contributions to support the Council of Europe's programme of work. In 2020, an additional EUR 1,100,000 (1.5% of the budget) was collected this way.

6. Inter-American Human Rights Commission and Court System

i. Costs

The inter-American system for the protection of human rights comprises the Inter-American Commission of Human Rights (IACHR or Inter-American Commission) and Inter-American Court of Human Rights (IACtHR or Inter-American Court).

The Inter-American Commission receives income from two sources: the Organization of American States' (OAS) Regular Fund and specific donations through a 'resource mobilization strategy'.⁴² These are discussed further in the following section.

The budget of the Inter-American Commission from the OAS Regular Fund for 2020, as approved by the General Assembly, was USD 10,627,900.⁴³ Of this, USD 7,741,200 was for staff expenses and USD 2,886,700 for operating expenses.⁴⁴ As of 31 December 2020, the original Regular Fund budget was modified to a total of \$9,119,129 distributed as follows: USD 6,223,100 for staff expenses and USD 2,896,029 for non-staff expenses.⁴⁵

In addition to the budget from the Regular Fund, the Inter-American Commission also raised USD 6,845,659 in 2020 through a 'resource mobilization strategy'.⁴⁶ For example, in 2020, the

⁴¹ Consolidated Financial Statements of the Council of Europe for the year ended 31 December 2018 (CM(2019)100 31/05/2019), https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168094bce3, p. 44, 64.

⁴² Source: <https://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap.6-en.pdf>.

⁴³ Source: <https://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap.6-en.pdf> para 24.

⁴⁴ Source: <https://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap.6-en.pdf> para 24.

⁴⁵ Source: <https://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap.6-en.pdf> para 25.

⁴⁶ Source: <https://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap.6-en.pdf> para 26.

IACHR Executive Secretariat drafted and submitted 34 reports for 21 projects, each with its respective donor.⁴⁷

The annual financial planning for 2021 based on the Regular Fund (USD 10 million) and specific funds (estimated at USD 6.3 million) was for USD 16.3 million.⁴⁸

The Inter-American Court received USD 7,203,132.12 in 2020.⁴⁹ Of this, 5,163,697.50 came from the OAS Regular Fund.⁵⁰ The 2021 budget of the IACtHR, as approved by the OAS General Assembly (OAS Regular Fund), is for (the somewhat lower amount of) USD 5,024,000.⁵¹

ii. Who finances?

The income of both the Inter-American Commission and the Inter-American Court come from the OAS Regular Fund and other income. In particular, the income of the Inter-American Commission comes from 1) the OAS Regular Fund and 2) specific funds/extraordinary income. The income of the Inter-American Court comes from four main sources: 1) the OAS Regular Fund, 2) voluntary contributions from Member States, 3) international cooperation projects, and 4) other extraordinary income.⁵² So, for example, out of the USD 7,203,132.12 received by the Inter-American Court in 2020, USD 5,163,697.50 (71.69%) came from the OAS Regular Fund, USD 514,416.13 (7.14%) came from Member States' voluntary contributions, and USD 1,525,018.49 (21.17%) from international cooperation projects.⁵³

The OAS Regular Fund is principally made up of the quotas collected from the Member States.⁵⁴ It also includes contributions from other funds for technical supervision and administrative support provided by the Secretariat.⁵⁵

⁴⁷ Source: <https://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap.6-en.pdf> para 32.

⁴⁸ Source: <https://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap.6-en.pdf> para 31.

⁴⁹ Source: https://www.corteidh.or.cr/images/informes/2020_informe_09.pdf.

⁵⁰ Source: https://www.corteidh.or.cr/images/informes/2020_informe_09.pdf.

⁵¹ Source: https://www.corteidh.or.cr/images/informes/2020_informe_09.pdf.

⁵² Source: https://www.corteidh.or.cr/images/informes/2020_informe_09.pdf.

⁵³ Source: https://www.corteidh.or.cr/images/informes/2020_informe_09.pdf.

⁵⁴ Source: <https://www.oas.org/saf/dfams/default.asp>. For information on the latest quotas, see https://www.oas.org/saf/dfams/Latest_Quotas.PDF.

⁵⁵ Source: <https://www.oas.org/saf/dfams/default.asp>.

7. African Court on Human and Peoples' Rights

i. Costs

The 2020 approved budget of the ACHPR was USD 13,475,992. The African Union Commission, however, in April 2020 requested all African Union (AU) organs, including the ACHPR, to reduce their 2020 approved budget in order to contribute to funding of initiatives aimed at fighting the Covid-19 pandemic in the continent. The ACHPR, therefore, reduced its 2020 budget by USD 2,997,121. The Court's budget after the reduction stood at USD 10,478,871.⁵⁶

The budget covers expenses of the Court such as consultancy services, non-consultancy services, goods and works⁵⁷, emoluments and allowances for judges, registry costs,⁵⁸ and the legal aid scheme.⁵⁹

ii. Who finances?

By virtue of Article 32 of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights, the Court's budget shall be determined and funded by the assessed contributions of members states of the AU.

8. The Iran-US Claims Tribunal

i. Costs

The operational costs of the IUSCT can be broken down as follows: (1) capital and operating budget, which in 1983 amounted to USD 4 million USD (USD 11,265,937 AFI⁶⁰) and (2) fees

⁵⁶ Source: <https://www.african-court.org/wpafc/activity-report-of-the-african-court-on-human-and-peoples-rights-1-january-31-december-2020/>, p . 12-13.

⁵⁷ Source: <https://www.african-court.org/wpafc/annual-procurement-plan-2021/>.

⁵⁸ Article 32 of ACHPR Protocol

⁵⁹ Source: <https://www.african-court.org/wpafc/fees-and-legal-aid/>.

⁶⁰ To adjust data for inflation (AFI), we have used the financial calculator <https://www.inflationtool.com/>, treating 1983 as the starting year and updating the data to 2022.

for maintaining the security account,⁶¹ which in 1983 amounted to USD 1,800,000 (USD 5,069,672 AFI).⁶² The Federal Reserve Bank of New York incurred the costs of processing award payments of *c.* USD 100,000. The US government also spent USD 1,000,000 (USD 2,816,484 AFI) on the Office of Iranian Claims, in the United States and in The Netherlands (The Hague), and the office of the US Agent to the IUSTC. With IUSTC costs of *c.* USD 4,300,000 million in 1983,⁶³ the Department of State projected the 10 years' total costs, based upon 5% inflation, to amount to USD 85,000,000 (USD 239,401,159 AFI).⁶⁴

The IUSCT costs included, in particular, the salaries of 9 arbitrators, who sat both as a Full Tribunal and in Chambers.⁶⁵ Initially, the arbitrators and agents met in rented rooms at the Peace Palace, and the members and staff of the ICJ, the PCA and the Carnegie Foundation provided support to the organization of IUSCT work.⁶⁶ By 1984 the IUSCT occupied its own building and its staff grew to sixty persons consisting of: (i) legal clerks to each of the Chambers, (ii) the Registry, (iii) Language Services, (iv) secretaries and (v) other essential building and administrative personnel.⁶⁷

When the Department of State argued before the Congress in favour of a bill that would allow for reimbursement of the government of the IUSCT's costs, they contended that according to US agencies' 'best estimates', a 2% deduction from the awarded compensation would reflect the private share of the IUSTC' legal and administrative costs.⁶⁸ At the time out of 3,700 claims

⁶¹ By virtue of the Algiers Accords, parties agreed to establish a Security Account for the payment of successful US claims. The account was constituted with USD 1 billion (USD 2,75 billion AFI) drawn from frozen Iranian assets.

⁶² United States Congress House Committee on Foreign Affairs Subcommittee on International Economic Policy and Trade, The Iran Claims Act: Hearing Before the Subcommittee on International Economic Policy and Trade of the Committee on Foreign Affairs, House of Representatives, Ninety-Eighth Congress, First Session, on HR 3241, 16 June 1983 (US Government Printing Office 1984) 9, 14.

⁶³ The DoS' estimates included: - 50% of Tribunal's operating costs totalling *ca.* USD 2.08 million, - 50% of maintenance of the security account costs *ca.* USD 900,000, - legal advisor's offices costs of USD 1.2 million and - NY FED and other US agencies' costs of about USD 100,000. The Department estimated that the USTC costs for 1983 were USD 4,000,000 and USD 85,000,000 over a period of ten years. These figures sum up to USD 4,280,000. However, the figures provided during testimony by Michael Matheson, DoS Deputy Legal Advisor were rounded up, and they are not fully consistent throughout the testimony. The data behind the ten-year financial estimate were not presented.

⁶⁴ The actual average inflation rate between 1983 and 1993 amounted to 3.79%.

⁶⁵ Claims Settlement Agreement, article 111(1)

⁶⁶ Jamison M Selby and David P Stewart, 'Practical Aspects of Arbitrating Claims Before the Iran-United States Claims Tribunal' (1984) 18 International Lawyer 211, 214.

⁶⁷ *ibid.*

⁶⁸ United States Congress House Committee on Foreign Affairs Subcommittee on International Economic Policy and Trade, The Iran Claims Act: Hearing Before the Subcommittee on International Economic Policy and Trade

before the Tribunal, over 3,600 were filed by private actors (US National and financial institutions).⁶⁹ Intergovernmental claims amounted to less than 3% of the workload.

ii. Who finances?

Even though IUSCT is one of the “largest and most complex international arbitration endeavors in recent times”⁷⁰, settling a number of famous cases and serving as a training ground for countless US international litigators, and the amounts awarded to US investors are widely known, there is surprisingly little information regarding the costs of its functioning.

The matter gained some notoriety because of the *Sperry* case,⁷¹ which went all the way up to the US Supreme Court, regarding the 2% fee (subsequently lowered to 1,5% and 1%) imposed on amounts awarded to the US claimants ‘as a reimbursement’ to the government of ‘expenses incurred in connection with the arbitration of claims’.⁷² Despite the public interest in the case, widespread attention focused primarily on the constitutionality of the fee, namely whether the attachment of the fee constituted expropriation without just compensation, rather than on who actually footed the bill and what the amount was of the US financial contribution.⁷³

We have only fragmentary information about the actual costs of the IUSCT. This section draws on public data from the 1980s, adjusted for inflation (AFI). In accordance with the so-called Algiers Accords (an agreement embodied in two declarations of the Government of Algeria), ‘[t]he expenses of the Tribunal shall be borne equally by the [Iranian and US] governments’.⁷⁴

of the Committee on Foreign Affairs, House of Representatives, Ninety-Eighth Congress, First Session, on HR 3241, 16 June 1983 (US Government Printing Office 1984) 4, 9, 13.

⁶⁹ *ibid* 2.

⁷⁰ Jamison M Selby and David P Stewart, ‘Practical Aspects of Arbitrating Claims Before the Iran-United States Claims Tribunal’ (1984) 18 *International Lawyer* 211.

⁷¹ *United States of America V. Sperry Corporation and Sperry World Trade, Inc.*, 493 US 52, 110 S.Ct. 387, 107 L.Ed.2d 290

⁷² In June 7, 1982, the Department of the Treasury issued a ‘Directive License’ requiring the Federal Reserve Bank of New York to deduct 2% from each award certified by the Tribunal and to pay the deducted amount into the Treasury to reimburse Tribunal costs incurred by the US Government (47 Fed.Reg. 25243 (1982)). This administrative act was supplemented by public law stipulating for the deduction of 1.5% of the first USD 5,000,000 and 1% of any amount over this initial threshold (§ 502 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987).

⁷³ Michael Peter Waxman, ‘Who Pays for the Iran-United States Claims Tribunal?’ (1989) Faculty Publications. Paper 350 <http://scholarship.law.marquette.edu/facpub/350>.

⁷⁴ Algiers Accords art VI(3).

Whereas the data presented above (adjusted for inflation) concern the period between 1983 and 1993, it should be stressed that this is when the core of the dispute settlement work was performed. There are still pending cases including official claims of both governments arising out of contractual arrangements between them for the purchase and sale of goods and services (so-called 'B' claims), as well as disputes regarding the interpretation and/or performance of the General Declaration (so-called 'A' claims). However, the majority of claim is subject to a double temporal bar: they must have been outstanding on 19 January 1981 and filed with the IUSCT by 19 January 1982.

Comparative Table of Costs and Financing (selection)

| DISPUTE SETTLEMENT BODY | ANNUAL COSTS (2021) | WHAT IS COVERED | WHO FINANCES |
|--|--------------------------------|--|---|
| ICJ | USD 30,778,800 | Essentially, judges and other staff costs, contractual services, general operating expenditure, supplies and materials, furniture and equipment, etc. | UN Member States |
| ITLOS | EUR 12,077,500 | Essentially, judges and other staff costs, operating expenditures (eg maintenance of premises), non-recurrent expenditures, eg costs for equipment, etc. | States Parties and the International Seabed Authority |
| ICC | EUR 148,259,000 | Essentially, judges and staff salaries, and the expenses of various organs of the Court. | States Parties, the UN, and voluntary contributors |
| ECtHR | EUR 73,994,300 | 95% of the budget covers judges and staff salaries | Council of Europe Member States |
| ACHPR | USD 10,478,871* | Judges and staff salaries, other expenses of the | African Union Member States |

| | | | |
|---------|----------------|--|---|
| | | Court including the legal aid scheme. | |
| ICSID** | USD 50,774,088 | Essentially, expenses related to arbitration and conciliation proceedings, administrative expenses | Especially, revenues/fees from the parties to arbitration and conciliation proceedings. In 2021, this income was USD 51,280,009 |

*2020 budget.

** Source: *ICSID 2021 Annual Report*
https://icsid.worldbank.org/sites/default/files/publications/ICSID_AR21_CRA_b11_web.pdf.