United Nations A/CN.4/764

General Assembly

Distr.: General
10 January 2024
English
Original: Arabic/English/French/
Spanish

International Law Commission
Seventy-fifth session
Geneva, 15 April–31 May and 1 July–2 August 2024

Settlement of disputes to which international organizations are parties

Memorandum by the Secretariat

Contents

		Page
	Abbreviations	3
I.	Introduction	6
II.	Replies received from Governments	7
	A. General replies	7
	B. Specific replies to the questions in the questionnaire	9
	1. Question 1	9
	2. Question 2	12
	3. Question 3	21
	4. Question 4	22
	5. Question 5	24
	6. Question 6	27
	7. Question 7	29
	8. Question 8	34
	9. Question 9	38
	10. Question 10	47
	11. Question 11	50
III.	Replies received from international organizations and entities	51
	A. General replies	51

23-25562 (E) 210224

B. Specific replies to the questions in the questionnaire 60
1. Question 1 60
2. Question 2 66
3. Question 3 82
4. Question 4 87
5. Question 5 91
6. Question 6 97
7. Question 7 101
8. Question 8 103
9. Question 9 107
10. Question 10 129
11. Question 11 132

Abbreviations

AIAC	Asian International Arbitration Centre
BINUB	United Nations Office in Burundi
BINUCA	United Nations Integrated Peacebuilding Office in the Central African Republic
BINUH	United Nations Integrated Office in Haiti
CFC	Common Fund for Commodities
EAG	Eurasian Group on Combating Money Laundering and Financing of Terrorism
FAO	Food and Agriculture Organization of the United Nations
ICD	Islamic Corporation for the Development of the Private Sector
ICIEC	Islamic Corporation for the Insurance of Investment and Export Credit
ILOAT	International Labour Organization Administrative Tribunal
IsDB	Islamic Development Bank
ITFC	International Islamic Trade Finance Corporation
ITLOS	International Tribunal for the Law of the Sea
MENUB	United Nations Electoral Observer Mission in Burundi
MINUJUSTH	United Nations Mission for Justice Support in Haiti [replaced by BINUH]
MINURCA	United Nations Mission in the Central African Republic
MINURCAT	United Nations Mission in the Central African Republic and Chad
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
MINUSTAH	United Nations Stabilization Mission in Haiti [replaced by MINUJUSTH]
MIPONUH	United Nations Civilian Police Mission in Haiti
MONUA	United Nations Observer Mission in Angola
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo [replaced by MONUSCO]
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
OACPS	Organization of African, Caribbean and Pacific States
ONUB	United Nations Operation in Burundi
ONUC	United Nations Operation in the Congo
ONUMOZ	United Nations Operation in Mozambique

OPCW	Organisation for the Prohibition of Chemical Weapons
PCA	Permanent Court of Arbitration
UNAMID	African Union-United Nations Hybrid Operation in Darfur
UNCRO	United Nations Confidence Restoration Operation in Croatia
UNAMIR	United Nations Assistance Mission for Rwanda
UNAMSIL	United Nations Mission in Sierra Leone
UNAVEM III	United Nations Angola Verification Mission III
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNIFIL	United Nations Interim Force in Lebanon
UNIOGBIS	United Nations Integrated Peacebuilding Office in Guinea-Bissau
UNIOSIL	United Nations Integrated Office in Sierra Leone
UNIPSIL	United Nations Integrated Peacebuilding Office in Sierra Leone
UNISFA	United Nations Interim Security Force for Abyei
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIH	United Nations Mission in Haiti
UNMIL	United Nations Mission in Liberia
UNMIN	United Nations Mission in Nepal
UNMIS	United Nations Mission in Sudan
UNMISET	United Nations Mission of Support in East Timor
UNMISS	United Nations Mission in South Sudan
UNMIT	United Nations Integrated Mission in Timor-Leste
UNOCI	United Nations Operation in Côte d’Ivoire
UNOPS	United Nations Office for Project Services
UNOTIL	United Nations Office in Timor-Leste
UNPOS	United Nations Political Office for Somalia [replaced by UNSOM]
UNPREDEP	United Nations Preventive Deployment Force
UNPROFOR	United Nations Protection Force
UNSMIH	United Nations Support Mission in Haiti
UNSOM	United Nations Assistance Mission in Somalia
UNTAC	United Nations Transitional Authority in Cambodia
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium
UNTMIH	United Nations Transition Mission in Haiti

UNV	United Nations Volunteers Programme
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

I. Introduction

1. At its seventy-third session, in 2022, the International Law Commission decided to include the topic "Settlement of international disputes to which international organizations are parties" in its programme of work and appointed Mr. August Reinisch as Special Rapporteur.[1] At the same session, the Commission requested the Secretariat to prepare a memorandum providing information on the practice of States and international organizations which may be of relevance to its future work on the topic, including both international disputes and disputes of a private law character.[2] The Commission also approved the Special Rapporteur's recommendation that the Secretariat contact States and relevant international organizations in order to obtain information and their views for the purposes of the memorandum.[3] To this end, the Special Rapporteur prepared a questionnaire, which the Secretariat communicated to States and relevant international organizations in December 2022.[4] The present memorandum has been prepared in fulfilment of the aforementioned request by the Commission.

2. At its seventy-fourth session, in 2023, the Commission decided to change the title of the topic from "Settlement of international disputes to which international organizations are parties" to "Settlement of disputes to which international organizations are parties".[5]

3. As of 1 September 2023, written replies to the questionnaire had been received from Austria (3 May 2023), Belgium (28 April 2023), Chile (3 May 2023), Côte d'Ivoire (14 March 2023), Jordan (5 May 2023), the Kingdom of the Netherlands (2 May 2023), Malaysia (12 May 2023), Morocco (25 April 2023), Oman (5 April 2023), Switzerland (3 May 2023), and the United Kingdom of Great Britain and Northern Ireland (28 April 2023).

4. As of 1 September 2023, written replies to the questionnaire had also been received from the following international organizations and entities: the Asian International Arbitration Centre (21 March and 26 April 2023) (AIAC), the Common Fund for Commodities (21 March 2023) (CFC), the Eurasian Group on Combating Money Laundering and Financing of Terrorism (5 May 2023) (EAG), the Food and Agriculture Organization of the United Nations (28 April 2023) (FAO), the Islamic Development Bank (22 May 2023) (IsDB), the International Tribunal for the Law of the Sea (26 April 2023) (ITLOS), the Organisation for the Prohibition of Chemical Weapons (23 May 2023) (OPCW), the Organization of African, Caribbean and Pacific States (30 April 2023) (OACPS), the Permanent Court of Arbitration (1 May 2023) (PCA), the United Nations Conference on Trade and Development (19 April 2023) (UNCTAD), the United Nations Development Programme (5 April 2023) (UNDP), the United Nations Framework Convention on Climate Change (4 May 2023) (UNFCCC), the United Nations Office for Project Services (1 May 2023) (UNOPS),

[1] Report of the International Law Commission on the work of its seventy-third session, *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 10* (A/77/10), para. 238.

[2] *Ibid.*, para. 241.

[3] *Ibid.*, para. 242.

[4] The questionnaire gave a brief background of the topic, an overview of disputes to which international organizations may be parties and a summary of the past work of the Commission concerning international organizations, particularly in the fields of treaty law, privileges and immunities, and responsibility. The questionnaire also contained specific questions addressed to States and international organizations. See https://legal.un.org/ilc/guide/10_3.shtml.

[5] Report of the International Law Commission on the work of its seventy-fourth session, *Official Records of the General Assembly, Seventy-eighth Session, Supplement No. 10* (A/78/10), para. 46.

the United Nations Office of Legal Affairs (8 August 2023), the World Food Programme (5 and 30 May 2023) (WFP), the World Health Organization (28 April 2023) (WHO), the World Intellectual Property Organization (20 January 2023) (WIPO), and the World Trade Organization (28 April 2023) (WTO).

5. The written replies received from Governments are contained in chapter II, while the written replies received from international organizations and other entities are contained in chapter III.[6] The replies are organized thematically as general replies and then specific replies to the questions in the questionnaire.[7]

II. Replies received from Governments

A. General replies

Morocco

[Original: French]

It is immediately clear that [the] topic will require reflection from Member States to enrich and inform the Commission's future work on State practice. It seems obvious that the examination of international organizations as subjects of international law in the context of dispute settlement will be a central element of this work.

In terms of methodology, the nature of the questions in the questionnaire raises a concern in that what might apply to an international organization might not necessarily apply to a State (see [reply of Morocco to] questions 1 and 8). Instead of this one-size-fits-all approach, the questions should have been tailored to the respondent, meaning that two separate questionnaires should have been developed.

At a purely substantive level, it is stated in the questionnaire document that certain disputes of a private law character "often raise public international law issues, such as immunity from jurisdiction, access to justice, or diplomatic protection". This could have been explained a bit more explicitly in order to provide a better understanding of the issue, albeit at a preliminary stage.

The Kingdom of Morocco wishes to submit to the Commission the following information concerning disputes between the Kingdom of Morocco and international organizations in its territory, in line with paragraph 13 of the questionnaire document:

Relations between States and relations between States and international organizations are based on principles as well as customary and treaty rules established by custom and international agreements.

As two distinct types of subject of international law, States and international organizations establish relations with each other in a variety of legal forms (constituent instruments of international organizations, agreements on privileges and immunities, cooperation and partnership agreements, headquarters agreements, etc.). The most frequently used is still a headquarters agreement. This is a type of instrument by which an international organization and one of its member States agree on the rules applicable to the establishment of the permanent headquarters or a regional office of the international organization in the territory of the host country. It is clear that disputes may arise in such situations. For this reason, the legal means by which any legal disputes between the two parties shall be addressed is invariably

[6] Abbreviations (e.g., UN, ILC) have been spelled out where necessary for clarity.

[7] In each of the sections below, replies received are arranged by States, international organizations and entities, which are listed in English alphabetical order.

provided for in the headquarters agreement, in a specific provision on the settlement of disputes.

The Kingdom of Morocco, which unquestionably favours the peaceful settlement of disputes, including those arising from the application or interpretation of a headquarters agreement, does not deviate from this international trend in its relevant treaty practice; it continues to give priority to negotiation, diplomatic exchanges and, where necessary, recourse to international arbitration, in accordance with the terms jointly agreed by the two parties.

Treaty practice between Morocco and international organizations in the area of headquarters agreements is characterized by diplomatic exchanges, periodic or regular cooperation and amicable dispute settlement. The letter and the spirit of such agreements establish clear parameters for the relations between the Government of Morocco and the international organization in question, namely: (1) cooperation between the two parties at all times and without preconditions; (2) continuous communication between the two parties within the framework of the institutional mechanisms for evaluating and monitoring the implementation of the agreement; and (3) amicable settlement of all disputes through negotiation or, failing that, international arbitration.

Disputes between an international organization and the Government of Morocco – which are few in number, or even non-existent, especially in the last two decades – must be settled using the mechanisms established in principle in the normative instrument binding the two parties (the constituent instrument of the organizations, a headquarters agreement or another agreement), using the preferred modes of settlement, as explained in the preceding paragraph.

In addition to that category of disputes, an international organization in Moroccan territory could be faced with disputes of an entirely different nature, between it and a different type of legal subject (natural or legal persons, i.e. employees, service providers, or victims of acts or injuries caused by the international organization).

In this regard, it is important to note that in headquarters agreements, a clear distinction is made between disputes between an international organization and the Government of Morocco and disputes between an organization and its staff or any other natural or legal person.

Given the above, it follows that the normative difference between disputes involving the Government of Morocco and an international organization (public international law disputes) and those involving an international organization and natural or legal persons (private law disputes) has an impact on the handling of the disputes, the procedures used to settle them and the applicable law. Disputes in the first category (public international law disputes) must be settled by the means mutually agreed upon by Morocco and the international organization in the headquarters agreement, while disputes in the second category (private law disputes) are unquestionably outside the scope of any headquarters agreement between Morocco and an organization, falling instead under a separate legal regime as determined by the contracts entered into by the international organization.

The Kingdom of Morocco hopes that the information it has shared with the International Law Commission will be a useful contribution to the body of information collected in connection with the questionnaire. It will continue to follow closely the development of the work on this topic and reserves the right to express, at the appropriate time, its views on the advisability and interest to the community of States of the inclusion of the topic in the programme of work of the Commission, once the Commission has provided more material for reflection.

B. Specific replies to the questions in the questionnaire

1. Question 1 – What types of disputes/issues have you encountered?[8]

Austria

[Original: English]

From a host country perspective, Austria has mostly encountered disputes between international organizations and States (i.e. Austria) as well as disputes between private parties and international organizations. Disputes between two or more international organizations are rare.

Disputes between Austria and international organizations usually emanate from differences concerning the interpretation of agreements, including but not limited to headquarters agreements, and often involve issues such as privileges and immunities of officials of international organizations or government representatives, cost sharing, etc.

In addition, Austria has also encountered a number of disputes between international organizations and private parties, many of them being labour disputes with present or former employees of international organizations as well as disputes concerning the rental of premises or traffic accidents. Most of the labour disputes deal with the alleged unfair termination of employment or remuneration issues, some of them also involve discrimination, harassment, mobbing, etc.

Belgium

[Original: French]

Since Belgium plays host to many international (and regional) organizations, its courts are regularly called upon to consider disputes of a private law character to which an international (or regional) organization is a party.

Belgium intervenes voluntarily in cases involving an international organization, most often to support the existence of either an immunity from jurisdiction or an immunity from execution. The cases mainly involve contractual or commercial disputes and disputes concerning labour relations between the organization and its agents (see [reply of Belgium] to question 2 *infra*), although they sometimes involve disputes concerning the operational activities of international organizations or debt recovery proceedings (see [reply of Belgium] to question 10 *infra*).

[8] Cross-references contained in the questions themselves were omitted to avoid confusion. Question 1 made reference to paragraphs 6 and 7 of the questionnaire. Paragraphs 6 and 7 read as follows:

"6. The settlement of disputes involving international organizations may concern mainly three different types: (a) disputes between international organizations, (b) disputes between international organizations and States and (c) disputes between international organizations and private parties, including individuals and legal persons, such as corporations or associations.

"7. In practice, there appear to be hardly any disputes between international organizations. States, both member and non-member States, occasionally have disputes with international organizations, often involving issues concerning headquarters or seat agreements. The most frequent types of disputes arising in practice are those where private parties raise claims against international organizations and, less often, where international organizations intend to bring legal action against private parties. The latter may be contractual disputes of international organizations and their service providers or other procurement related disputes or labour disputes between international organizations and their employees. In addition, there may be disputes involving victims of harmful activities attributable to international organizations who are in no contractual relationship with such organizations."

Chile

[Original: Spanish]

To date, there have been no disputes between international organizations and the State of Chile itself resulting from the application or interpretation of treaties to which both are parties.

There have been disputes between international organizations and private parties arising from the jurisdictional immunities of organizations. The nature of the immunities of international organizations gives rise to the possibility of a third party's right to access to justice being infringed, given that the most frequent application of these immunities is as a barrier or impediment to the exercise of judicial or adjudicatory jurisdiction, which could mean that local courts are the wrong forum to exercise such jurisdiction. Most of the disputes in question are related to labour matters.

Article 27 of the Vienna Convention on the Law of Treaties[1] provides that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46." This rule is fully applicable to international organizations,[2] meaning that a State party to a treaty establishing an intergovernmental organization or a State that has signed an agreement on immunities with such an organization may not invoke its internal law in order to not recognize the immunities and privileges provided for in the instrument.

The foregoing does not preclude failure to comply with the fundamental obligation to respect the rights at play in conflicts between an organization and a third party, such as the rights to due process and effective judicial protection.[3] This matter pertains to the international development of human rights and the constitutional protection of fundamental rights, as opposed to the immunities of international organizations, which are assumed as international obligations.[4] The difficulty lies in achieving compliance with the international obligations in dispute, i.e. recognizing the immunities from jurisdiction established at treaty level, while also protecting the human or fundamental rights of third parties.

Thus, as a result of the foregoing, when international organizations come into contact with the jurisdiction of a national legal system, the question of the effects or consequences of their immunities arises. While the need to uphold the immunities of organizations, in order to maintain their independence, should not be forgotten, that aim must be balanced against the rights of potential litigants to pursue their interests against an organization before a national court.

---

[1] Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), United Nations, *Treaty Series*, vol. 1155, No. 18232, p. 443.]

[2] This provision constitutes a codified customary rule. On this subject, see Annemie Schaus, "1969 Vienna Convention. Article 27: Internal law and observance of treaties", in Olivier Corten and Pierre Klein, eds., *The Vienna Conventions on the Law of Treaties: A Commentary*, vol. I (Oxford, Oxford University Press, 2006), pp. 688–701.

[3] August Reinisch, *International Organizations before National Courts* (New York and Cambridge, Cambridge University Press, 2000, 2008 reprint), p. 392. See also Pierre Schmitt, *Access to Justice and International Organizations. The Case of Individual Victims of Human Rights Violations* (Cheltenham, Edward Elgar, 2017), p. 91.

[4] On this issue, Blokker ("International organizations: the untouchables?", in Niels Blokker and Nico Shrijver, eds., *Immunity of International Organizations* (Leiden, Brill, 2015, pp. 1–17, at p. 2) states that "from the early days in which immunity rules became part of the law of international organizations, it has been recognized that such immunity should not leave complainants without a remedy."

Côte d'Ivoire

[Original: French]

Disputes between international organizations and private parties, including individuals and legal persons, such as corporations or associations.

These may be contractual disputes between an international organization and a service provider or other commercial disputes, or labour disputes between an international organization and one of its employees.

Jordan

[Original: Arabic]

[…] Disputes involving international organizations that have been brought before the Jordanian judiciary are mainly of a private law character, pertaining, in particular, to contractual disputes and claims for compensation for acts committed by an international organization, or by one of its members. From the information available in the Court Systems Management Program (*Mizan*), it is clear to see that the types of cases to which international organizations are parties are related to compensation for material and moral damage, financial claims, rent, estimation of adequate wages, restraining orders and contracts involving building contractors, as well as labour disputes between these organizations and their employees. Those are the most common disputes that are brought before the courts.

Kingdom of the Netherlands

[Original: English]

In recent years, the Kingdom of the Netherlands has encountered a dispute between an international organization and the State, as well as a dispute between an international organization and a private party (legal person).

Morocco

[Original: French]

[See reply of Morocco under "General replies".]

Oman

[Original: Arabic]

Disputes related to the Headquarters of international organizations are settled in the Sultanate of Oman, in accordance with the written headquarters agreements and the previously agreed upon mechanism for resolving such disputes.

Regarding disputes to which private parties file lawsuits against international organizations: "International organizations and bodies enjoy privileges and immunities in accordance with Article 105 of the Charter of the United Nations." As for the disputes of international organizations related to real estates, commercial and civil lawsuits, or list of successions and inheritance; they are excluded from diplomatic immunity and deemed as diplomatic missions, which was organized by the Vienna Convention on Diplomatic Relations of 1961,[1] and are subject to the local jurisdiction.

[1] Vienna Convention on Diplomatic Relations (Vienna, 18 April 1961), United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.]

Disputes brought by international organizations against private parties are subject to the local laws of the State.

Switzerland

[Original: French]

N.A.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

The United Kingdom has not encountered examples of disputes between two or more international organizations.

The United Kingdom is aware of examples of disputes between international organizations and States in particular disputes between the European Union and the United Kingdom arising under the Withdrawal Agreement [1] and the Trade and Cooperation Agreement.[2]

The United Kingdom is aware of some examples of disputes between private parties and international organizations. Some of these have arisen in the context of post-European Union Exit disputes between United Kingdom-based private parties and the European Union in the context of "legacy" cases relating to a decision taken by European Union institutions while the United Kingdom was still a member State. There are other miscellaneous examples (many of which are fairly historic) of disputes between private parties and an international organization, generally of a contractual nature.

2. Question 2 – What methods of dispute settlement have been resorted to in cases of disputes with other international organizations, States or private parties? Please provide any relevant case law, or a representative sample thereof. If you cannot provide such information for confidentiality reasons, could you provide any such decisions or awards in redacted form, or a generic description/digest of such decisions?*

Austria

[Original: English]

Disputes between Austria as a host country and international organizations are usually settled through negotiations. However, all headquarters agreements contain specific clauses for the settlement of disputes which provide for obligatory arbitration in cases that cannot be solved through negotiations.

---

[1] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, *Official Journal of the European Union*, C 384, p. 1.

[2] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (Brussels and London, 30 December 2020), *ibid*., L 149, p. 10.

* Cross-references contained in the questions themselves were omitted to avoid confusion. Question 2 made reference to paragraph 9 of the questionnaire. Paragraph 9 reads as follows: "Methods of dispute settlement comprise all methods of the peaceful settlement of disputes, as contained in Article 33 of the Charter of the United Nations (ie, negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means), which are generally available in case of disputes involving international organizations."

For disputes between international organizations and private parties, headquarters agreements obligate the international organizations to make provision for the appropriate settlement of disputes arising from contracts or other issues of a private law character as well as of disputes with officials or experts on mission, who by reason of their official position, enjoy immunity if such immunity has not been waived.

More recent headquarters agreements foresee the possibility of arbitration between international organizations and private parties, if no other settlement mechanism has been agreed. Labour disputes must be settled by an independent and effective dispute settlement mechanism protecting the rights of the employees in line with the European Convention on Human Rights,[1] which is not only a directly applicable treaty obligation for Austria under international law but also enjoys the status of Austrian constitutional law.

In addition, recent headquarters agreements also foresee exceptions from immunity for disputes concerning motor vehicles operated by or on behalf of an international organization, making it possible for individuals to go to court in case of damages or for the Austrian authorities to issue fines.

The Government's approach towards the new headquarters agreements was confirmed by a judgment of the Austrian Constitutional Court of 29 September 2022, in which the Court, for the first time, declared unconstitutional parts of a headquarters agreement that lacked provisions for the settlement of labour disputes through an independent mechanism, thus violating the employees' rights to a fair trial according to article 6 of the European Convention on Human Rights (Judgment No. SV 1/2021-23). The Court decided that the relevant provisions shall not be applied any more after 30 September 2024, giving the Government a time frame of two years to negotiate an amendment of the headquarters agreement.

In practice, most of the disputes between international organizations and private parties are settled through negotiations.

Belgium

[Original: French]

Disputes between international organizations and private individuals are often brought before Belgian courts and tribunals. These disputes are subject to judicial settlement. However, other methods are generally used to resolve them before they are brought before Belgian courts. Nonetheless, Belgium does not participate in these internal dispute settlement proceedings. It is only when the proceedings do not produce an outcome, or when they are brought against or following a decision taken during those proceedings, that Belgian courts are asked to consider the case.

These cases between international organizations and private individuals concern various types of disputes of a contractual or commercial nature, or disputes over matters concerning labour relations between the organization and its agents.

First, the application of the rules on the immunity of international organizations has been reaffirmed in commercial disputes.

One of the cases concerned an application for compensation following the cancellation of a service contract by an international organization and financial losses incurred by the service provider. In 2010, the trial court ordered an international

[1] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (Rome, 4 November 1950), United Nations, *Treaty Series*, vol. 213, No. 2889, p. 221.]

organization to pay financial compensation to the applicant, but the Brussels Court of Appeal found, in 2016, that the international organization enjoyed immunity from jurisdiction. The case was referred to the Belgian Court of Cassation, which found, in September 2018, that the international organization's immunity from jurisdiction should be assessed in relation to article 6, paragraph 1, of the European Convention on Human Rights.

The Court established that an international organization could not avail itself of its immunity from jurisdiction in a dispute with an individual unless it offered that individual an alternative means of redress that would ensure that the individual's rights guaranteed under the Convention, in particular its article 6, paragraph 1, and right of access to a court for complaints concerning rights and obligations of a civil character are respected.

In the case in question, the service contract between the applicant and the international organization contained an arbitration clause and the Court of Cassation found that there was nothing indicating that said clause did not offer an effective and reasonable alternative to the international organization's immunity from jurisdiction. The clause provided assurance that the applicant's fundamental rights, including the right to a fair trial, would be respected. The fact that the clause included the obligation for any arbiter to be a national of a State party to the international organization and have security clearance did not confer on the international organization a privileged status, and did not call into question the independence of the arbiters, their neutrality or their objectivity vis-à-vis the applicant. The Court pointed out that the right of access to a court is not absolute and may, as in the instant case, be subject to limitations that do not impair the very substance of the right. The Court of Cassation dismissed the appeal.

With regard to labour relations between the organization and its agents, the Court of Cassation decided that an international organization's immunity from jurisdiction may be set aside if the organization has not arranged a clean appeal procedure and the official is deprived of access to a court owing to the immunity from jurisdiction. It is worth considering whether the organization's appeal procedure does, in fact, protect the rights guaranteed under the Convention, notably its article 6, paragraph 1.

A first illustration may be found in the *Chapman v. Belgium* (2013) case, where the applicant, who had been employed under successive fixed-term contracts for 13 years by an international organization (and some of the organization's agencies), sought to have his contract reclassified as a permanent contract.

The Brussels Employment Appeal Tribunal, ruling on appeal of a decision of the Brussels Employment Tribunal issued in 2002, found that the applicant could have taken his case to the Appeals Board established by the regulations concerning dispute claims and appeals, even though he was no longer in service. According to the Employment Appeal Tribunal, having regard mainly to the composition of the Board, the independence of its members, the scope of its competence, the adversarial nature of its procedure, the possibility of the applicant being assisted by a representative of his choosing, the fact that decisions were taken by a majority, delivered in writing and accompanied by reasons, the procedure afforded sufficient safeguards for the purposes of the Convention and the applicant should thus have availed himself of that remedy.

The European Court of Human Rights upheld the Employment Appeal Tribunal's judgment acknowledging the international organization's immunity from jurisdiction on the ground that the applicant had a reasonable means of appeal to effectively protect the rights guaranteed under the Convention. The Court noted that the international organization's immunity from jurisdiction could constitute a

restriction to article 6, paragraph 1, provided it was not disproportionate. The Court found that the procedure for referring a case to the Appeals Board offered sufficient safeguards in that regard.

In a more recent case, in 2017, the plaintiff filed a claim against Belgium and the international organization *in solidum* with the Brussels Employment Tribunal concerning the conclusion of four successive contracts covering a period running from January 2009 to December 2014, in order to "ensure the functioning of the medical service of the international organization in Brussels". According to the different contracts, the international organization could, on the expiry of the contracts, decide to retain the services of the plaintiff and to propose to her a new contract to that end.

More than one year after signing her last contract, the plaintiff, a medical consultant, sought, *inter alia*, to have her consulting contract reclassified, and to be granted a permanent contract and damages. Following various internal processes, her claims were rejected, primarily because the civilian personnel regulations of the international organization did not apply, since she did not fall under the ambit of the latter and there was no superior-subordinate relationship typically found in work contracts binding her to the organization.

Before the Tribunal, the plaintiff said that article 6 of the Convention prevented the application of the international organization's immunity from jurisdiction. The Tribunal did not share that view, ruling that it had no jurisdiction, owing to the international organization's immunity. That decision was upheld by the Brussels Employment Appeal Tribunal in 2020.

Chile

[Original: Spanish]

Dispute settlement mechanisms provided for in headquarters agreements between Chile and international organizations include the procedure set forth in sections 24 and 32 of the Convention on the Privileges and Immunities of the Specialized Agencies[1] – whereby the International Court of Justice shall be requested to provide an advisory opinion, if the dispute involves certain United Nations agencies – and also consultations and arbitration.

However, as mentioned above, to date there have been no disputes between the Republic of Chile and international organizations that have made it necessary to resort to any of the aforementioned means of dispute resolution.

Nevertheless, in relation to [the reply of Chile] to [question 1], it should be noted that disputes between international organizations and private parties, in particular those concerning labour matters, have been resolved through the national courts.

National jurisprudence has been divided on the question of whether national courts are competent to hear cases involving international organizations. The jurisprudence has gone in a zigzagging and somewhat contradictory direction; the immunity of international organizations from jurisdiction has been accepted almost without limit in some cases, while in others it has not been accepted at all.

In Chile, there have been cases, specifically cases brought against the United Nations Development Programme (UNDP), in which it has been claimed before the national courts that the service contracts between private parties and UNDP indicate

[1] Convention on the Privileges and Immunities of the Specialized Agencies (New York, 21 November 1947) United Nations, *Treaty Series*, vol. 33, No. 521, p. 261.]

that any claim or dispute between the parties concerning the interpretation, execution or termination of the contract that cannot be settled amicably must be settled through obligatory arbitration as set out in the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). Obligatory arbitration must, in all cases, be preceded by a conciliation procedure as provided for in the UNCITRAL Conciliation Rules.

The Ministry of Foreign Affairs of Chile understands that this clause complies with article VIII of the Convention on the Privileges and Immunities of the United Nations,[2] regarding the settlement of disputes, which provides that "the United Nations shall make provisions for appropriate modes of settlement of: (*a*) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party" and has so informed the courts.

Côte d'Ivoire

[Original: French]

Negotiation, mediation and conciliation.

Jordan

[Original: Arabic]

[…] Resorting to the judiciary is the most common method of resolving such disputes. It should be noted, however, that international organizations frequently stipulate in their contracts that disputes are to be resolved through arbitration or mediation.

Under Jordanian law, mediation is an alternative method for resolving disputes. The three types of mediation stipulated in Jordanian mediation law are judicial, contractual and private. In addition, there is a special law for arbitration that addresses all procedures related to arbitration and the mechanism for ratifying or appealing against an arbitration award. There is nothing to prevent disputes involving international organizations from being referred to mediation. Based on the information available in Court Systems Management Program (*Mizan*), no cases in which international organizations were a party have been referred to the Judicial Mediation Department.

Kingdom of the Netherlands

[Original: English]

(*a*) Dispute between an international organization and the State

In a dispute between the Kingdom of the Netherlands and the Permanent Court of Arbitration, the latter initiated an arbitration procedure against the Kingdom in respect of the application of the Agreement concerning the Headquarters of the Permanent Court of Arbitration (PCA).[1] The dispute concerns the allocation of office space to PCA by the Carnegie Foundation in the Peace Palace.

[2] Convention on the Privileges and Immunities of the United Nations (New York, 13 February 1946), United Nations, *Treaty Series*, vol. 1, No. 4, p. 15, and vol. 90, p. 327.]

[1] Agreement concerning the Headquarters of the Permanent Court of Arbitration between the Kingdom of the Netherlands and the Permanent Court of Arbitration (The Hague, 30 March 1999). Available from https://wetten.overheid.nl/BWBV0001409/2000-08-09/0/ [and United Nations, *Treaty Series*, vol. 2304, No. 41068, p. 101].

On the basis of the Headquarters Agreement, the Netherlands has the obligation to take whatever reasonable action, within its power, to adequately accommodate PCA with its premises necessary for the exercise of its official activities.

In light of this obligation, the Secretary-General of PCA has requested to consult with the Netherlands on the basis of the dispute settlement mechanism as provided for in the Headquarters Agreement. These consultations have led to the adoption of an Interpretative Declaration and Joint Conclusions. The Interpretative Declaration was published in the Dutch Treaty Series (*Tractatenblad* 2021, No. 46).[2] Several proposals to make arrangements between PCA, the Netherlands and the Carnegie Foundation for the allocation of office space in the Peace Palace subsequently failed.

On 12 January 2022, PCA notified the Kingdom of the Netherlands of the start of arbitration proceedings against the Kingdom. PCA is of the view that the Kingdom has not fulfilled its obligations under the Headquarters Agreement by failing to agree on the PCA's request in respect of three specific rooms in the Peace Palace. The Kingdom on the other hand, is of the view that it has respected its obligations under the Headquarters Agreement, since PCA has sufficient space at its disposal and a structural solution cannot only be reached in the manner as preferred by PCA. The arbitration proceedings are in line with the dispute settlement provisions of the Headquarters Agreement and the arbitration rules applicable to a dispute between the Kingdom and PCA in respect of the latter's headquarters.

(*b*) Dispute between an international organization and a private party

In a dispute between the North Atlantic Treaty Organization (NATO) and the Supreme group of entities (a private actor) proceedings were initiated before a Dutch district court and subsequently the Court of Appeal (case ECLI:NL:GHSHE:2019:4464).[3]

The case concerns a claim for alleged non-payments under certain contracts entered into between the parties for the supply of fuel. The NATO entities against whom the claims were brought were the Supreme Headquarters of the Allied Powers in Europe (SHAPE) (headquartered in Belgium) and the Allied Joint Force Command Brunssum (JFCB) (located in the Netherlands). JFCB was acting on behalf of SHAPE and concluded certain contracts with Supreme regarding the supply of fuel to SHAPE for the NATO mission in Afghanistan carried out for the International Security Assistance Force (ISAF). Supreme invoked the jurisdiction of Dutch courts for alleged non-payment under the contracts. The NATO entities asserted immunities based on their status as international organizations. The Court of Appeal held that interest of SHAPE in immunity from execution prevailed over the Supreme companies' interest in the recovery of their claim and was not contrary to article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

Second related proceedings came before the Dutch Supreme Court (case ECLI:NL:HR:2019:292).[4] […] In these proceedings, the Dutch Supreme Court made a reference for a preliminary ruling to the European Court of Justice (case C-186/19).[5]

[2] https://zoek.officielebekendmakingen.nl/trb-2021-46.pdfofficielebekendmakingen.nl/trb-2021-46.pdf.

[3] https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:GHSHE:2019:4464&showbutton=true&keyword=200%252f216%252f570%252f01&idx=1.

[4] See https://uitspraken-rechtspraak-nl.translate.goog/?_x_tr_sl=nl&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc&_x_tr_hist=true#!/details?id=ECLI:NL:HR:2019:292. An automated translation of the Supreme Court's decision can be found at https://wetten.overheid.nl/BWBV0001409/2000-08-09/0/.

[5] https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&num=C-186%252F19&for=&jge=&dates=&language=en&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&lgrec=de&lg=&page=1&cid=5166961.

Observations were submitted in these proceedings on behalf of the Netherlands Government.

The Dutch Supreme Court has rejected the appeal of Supreme by stating that the Court of Appeal's conclusions in respect of the immunity of SHAPE were well founded (case ECLI:NL:HR:2021:1956).[6]

Morocco

[Original: French]

[See reply of Morocco under "General replies".]

Oman

[Original: Arabic]

The Sultanate of Oman pursues the settlement of disputes related to international organizations – if any – in accordance with a prior agreement stipulated in writing for the mechanism of resolving these disputes, and is usually settled through political negotiations.

Switzerland

[Original: French]

Switzerland hosts many international organizations on its territory. As a result, cases involving disputes of a private law character to which an international organization is a party have been brought before the Swiss judicial and executive authorities on several occasions. Applicants are generally referred back to the dispute settlement provisions put in place by the international organizations in accordance with their undertakings given to Switzerland in the conclusion of their respective headquarters agreements. If applicants attempt to initiate proceedings before Swiss courts or executive authorities (Federal Department of Foreign Affairs and/or Federal Council) against international organizations in disputes of a private law character, they are referred back to the dispute settlement system put in place by the international organizations flowing from the headquarters agreement concluded with Switzerland.

Some examples of case law:

– *Federal Court decision No. ATF 118 lb 562 of 21 December 1992*:[1] The Federal Court considered the question of immunity from jurisdiction invoked by the European Organization for Nuclear Research (CERN) in an appeal against a decision of an arbitral tribunal. The Federal Court noted *inter alia* that: "the subjection of international organizations to an arbitration clause does not mean a waiver of their immunity. The arbitration in which they participate remains protected from any intervention by a national court, unless the organization waives its immunity or its headquarters agreement provides otherwise, or the organization agrees that the arbitration be subject to a national law, generally that of the headquarters ..." (recital 1b). The Federal Court upheld the immunity from jurisdiction of CERN and declared the appeal inadmissible.

– *Unpublished Federal Court decision No. 4C.518/1996 of 25 January 1999*: The Federal Court considered the question of immunity from jurisdiction of the League of Arab States in the context of a labour law dispute. The Court pointed out that "international organizations enjoy absolute, complete and unfettered

[6] See https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:HR:2021:1956.

[1] See https://www.bger.ch/ under "Jurisprudence".

immunity. The principle of so-called relative immunity applies only to States, since the distinction between *acta de jure imperii* and *acta de jure gestionis* does not apply to international organizations ... The case law specifies, however, that since immunity guarantees that they will not be subject to the jurisdiction of State courts, international organizations enjoying such a privilege must give an undertaking to the host State, generally in the headquarters agreement, that they will establish a method for settling disputes that may arise in connection with contracts concluded with private individuals. This obligation to establish a procedure for settling disputes with third parties is the counterpart of the immunity granted ...” (recital 4 (c)). The Court upheld the organization’s immunity from jurisdiction and dismissed the appeal.

– *Decision No. ATF 130 I 312 of 2 July 2004*: The Federal Court considered *inter alia* a possible violation of the right to a fair trial (art. 6 of the European Convention on Human Rights) following the refusal by CERN to establish a third arbitration procedure in the case of a dispute. The Court noted that “art. 24 (a) of the headquarters agreement provides that CERN ‘shall make appropriate arrangements for the satisfactory settlement of disputes arising from contracts and other disputes to which the organization is a party and other disputes on a point of private law’ ... The exclusion of any review by State courts is therefore corrected by recourse to an arbitral tribunal, or to any other means that may be covered by the expression ‘appropriate arrangements’ of article 24 of the headquarters agreement. This position is consistent with the case law of the European Court of Human Rights ... the appellants had the opportunity to present the merits of their claims to the second arbitral tribunal ... they therefore ... had access to a court authority. This finding is sufficient to reject the claim of violation of article 6, paragraph 1, of the European Convention on Human Rights ...” (recital 4 - 4.3.2). The Federal Court rejected the appeal and did not find any violation of article 6 of the Convention. In its case, the European Court of Human Rights also found no violation of article 6 of the Convention (application No. 1742/05, *Eiffage S.A. and others v. Switzerland* – decision of 15 September 2009).

– *Decision No. ATF 136 III 379 of 12 July 2010*: The Federal Court considered the immunity of the Bank for International Settlements and held, among other things, that: “The respondent enjoys immunity from jurisdiction and from enforcement. According to the headquarters agreement, assets entrusted to the respondent or the deposits of the central banks cannot be the subject of an enforcement order, and the respondent, as a third-party debtor, cannot be sued in Switzerland for the purposes of an enforcement … It emerged, in the enforcement of the attachment order or the proceedings before the supervisory authority, that the respondent had at no time given its consent to the attachment of the Argentine assets and funds entrusted to it. The respondent cannot, however, be compelled to object to the attachment and to claim before the courts that its rights or immunity are affected by the attachment ... The supervisory authority rightly deemed the attachment orders and the enforcement thereof by the debt collection office to be manifestly invalid, in view of the immunity provisions in the headquarters agreement” (recital 4.2.2). The Federal Court upheld the organization’s immunity from jurisdiction and dismissed the appeal.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

In respect of [disputes between international organizations and States], concerning disputes between the United Kingdom and the European Union, none of these disputes has proceeded beyond initial stages. Examples of these disputes include:

Under the Trade and Cooperation Agreement, the United Kingdom formally requested consultations on 16 August 2022 pursuant to article 738 relating to the association of the United Kingdom to certain European Union research programmes (such as Horizon Europe). Consultations were held in the context of the Specialised Committee on Participation in Union Programmes on 22 September 2022. Formal consultations are (except where the parties agree to dispense with them) a necessary prelude to initiating arbitration under the [Trade and Cooperation Agreement]. The method of dispute resolution in each case was the method prescribed in the agreement itself.

Under the Withdrawal Agreement, the European Union (the European Commission) initiated the pre-litigation stages of the infraction process under article 12(4) of the Northern Ireland Protocol (now referred to as the Windsor Framework) in relation to alleged non-compliance by the United Kingdom with various obligations under the Protocol.[1] Article 12(4) provides for the European Commission to be able to bring infringement proceedings against the United Kingdom before the Court of Justice of the European Union in relation to certain obligations in the Protocol. The method of dispute resolution in each case was the method prescribed in the agreement itself.

The United Kingdom is also aware of an ongoing dispute concerning the United Kingdom via the World Trade Organization but concerning a complaint brought by the European Union regarding contracts for difference in low carbon energy generation which is currently at the consultation stage.[2] The method of dispute resolution in this case is the method prescribed in the Understanding on Rules and Procedures Governing the Settlement of Disputes which governs disputes relating to the General Agreement on Tariffs and Trade 1994.[3]

There are other "legacy cases" between United Kingdom-based private parties and the European Union, for example, in Joined Cases T-363/19 and T-456/19, *United Kingdom and ITV v. Commission* (now C-555/22 P on appeal to the Court of Justice of the European Union) in which ITV PLC contested the validity of a European Commission state aid decision.

In respect of [disputes between private parties and international organizations], the United Kingdom is aware of cases decided under by the United Kingdom domestic courts where an international organization was a party including:

1. *Maclaine Watson & Co Ltd v International Tin Council* [1990] 2 A.C. 418 (and other related cases concerning the International Tin Council)
2. *Arab Monetary Fund v Hashim and Others* [1991] UKHL
3. *Canary Wharf (BP4) T1 Ltd v European Medicines Agency* [2019] EWHC 335 (Ch)

These cases were brought in the domestic courts of the United Kingdom. The Civil Procedure Rules require parties in most cases to carry out steps before resorting to court proceedings to resolve issues including with Alternative Dispute Resolution.[4]

[1] Letter from Vice-President Maroš Šefčovič to David Frost, 15 March 2021 (europa.eu).

[2] DS612: United Kingdom — Measures Relating to the Allocation of Contracts for Difference in Low Carbon Energy Generation https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds612_e.htm.

[3] General Agreement on Tariffs and Trade 1994 (Annex 1 to the Marrakesh Agreement Establishing the World Trade Organization), United Nations, *Treaty Series*, vol. 1867, No. 31874, p. 190.]

[4] Practice Direction – Pre-Action Conduct and Protocols - Civil Procedure Rules (justice.gov.uk).

There are likely to be a number of other cases involving private parties, including those that are subject to confidential settlements and/or resolved by methods of alternative dispute resolution that are not published.

3. Question 3 – In your dispute settlement practice, for each of the types of disputes/issues arising, please describe the relative importance of negotiation, conciliation or other informal consensual dispute settlement and/or third-party dispute resolution, such as arbitration or judicial settlement.

Austria

[Original: English]

Disputes between Austria and international organizations are usually settled through negotiations. The possibility for arbitration, as contained in all headquarters agreements (see [reply of Austria to] question 2), has not been used.

When it comes to disputes between international organizations and private parties, negotiations are the preferred mode of settlement as well. However, in case of labour disputes employees may use the independent mechanisms provided by the international organization in question if the negotiations fail. Arbitration between private parties and international organizations hardly ever occurs due to the high costs involved.

In very rare cases, when individuals allege a violation of their constitutional rights, including those enshrined in the European Convention on Human Rights, they may address the Austrian Constitutional Court which may declare international agreements or parts thereof unconstitutional (see [reply of Austria to] question 5). In addition, individuals may file an application with the European Court of Human Rights in relation to any alleged violations of the European Convention on Human Rights after domestic remedies have been exhausted.

Belgium

[Original: French]

N/A (see [reply of Belgium] to question 2).

Côte d'Ivoire

[Original: French]

Consensual dispute settlement methods are preferred over other methods in disputes with private parties. Only if these fail will the parties resort to judicial resolution.

Jordan

[Original: Arabic]

[…] There is a benefit to resorting to alternative means of dispute resolution that are based on the consent of the parties and are referred to a neutral party. The benefit is that such means make it possible to take the time that it would take to consider such cases and use it to adjudicate other cases. Under Jordanian law, those alternative means are mediation and arbitration. In addition, such means make it possible to avoid entering into a legal dilemma, namely, the enforcement of judgments issued against international organizations that enjoy jurisdictional immunity, because mediated settlements often include an agreement regarding the manner and mechanism of implementation.

Choosing an appropriate dispute resolution method depends on a number of factors, including the nature of the dispute, the desired outcome, the legal context and the negotiating capacity of the parties concerned. It should be noted that, in some cases, the parties may opt for a range of different methods, such as negotiation followed by arbitration if a negotiated solution is not reached.

Kingdom of the Netherlands

[Original: English]

In the case as set out under ["Dispute between an international organization and the State" above], it was important to have consultations in respect of the application of the Headquarters Agreement ahead of the more formal arbitration proceedings as provided for in the Headquarters Agreement. Nine rounds of consultations took place in which issues of interpretation and application were extensively discussed. The consultations also led to the adoption of an Interpretative Declaration which potentially could have avoided the start of the arbitration procedure.

Oman

[Original: Arabic]

There is no participation in practice of settling a dispute, but the Sultanate of Oman is aware of the importance of negotiation in resolving all disputes, and always seeks reconciliation, in order to reach a possible settlement, either amicably, or through diplomatic or judicial means.

Switzerland

[Original: French]

N.A.

4. Question 4 – Which methods of dispute settlement do you consider to be most useful? Please indicate the preferred methods of dispute settlement for different types of disputes/issues.[**]

Austria

[Original: English]

Austrian headquarters agreements usually foresee the possibility of negotiations or arbitration for the settlement of disputes between Austria and the international organization. For disputes between private individuals and international organizations (with a few exceptions, such as labour disputes or disputes involving motor vehicles), the more recent agreements usually offer the possibility for arbitration if no alternative mechanism can be agreed. However, with reference to [reply of Austria to] question 3, negotiations, and to a lesser extent arbitration, are considered to be the most useful tools for dispute settlement.

Belgium

[Original: French]

NA (see [reply of Belgium] to question 2).

** Cross-references contained in the questions themselves were omitted to avoid confusion. Question 4 made reference to paragraphs 6, 7 and 9 of the questionnaire. For the text of paragraphs 6, 7 and 9 of the questionnaire, see footnotes 8 and * above.

Côte d'Ivoire

[Original: French]

The most useful settlement methods are negotiation, mediation and conciliation.

Jordan

[Original: Arabic]

[…] Arbitration and judicial mediation may be more suitable for settling disputes between international organizations and private parties when the parties reach an impasse and need the assistance of a neutral third party in order to take a final decision.

Recourse to regional agencies or arrangements is useful in disputes between States and international organizations, in particular when a regional perspective is needed and the dispute is related to regional interests.

Ultimately, the most effective method for resolving a dispute will depend on the specific circumstances of the dispute and the parties involved in each dispute.

Kingdom of the Netherlands

[Original: English]

It would depend on the case at hand which method of dispute settlement would be most useful, but in respect of disputes between an international organization and the State, consultations, followed by arbitration would seem adequate for the settlement of disputes/issues. At the same time, the Netherlands is of the view that arbitration by one arbitrator or by a tribunal of three arbitrators, with two of them appointed by the parties, is vulnerable when it comes to complex cases or cases that are politically or diplomatically sensitive.

For disputes between an international organization and a private party, consultations might be less useful because there might be a perceived imbalance between the international organization on the one hand and the private party on the other hand. In such cases, arbitration or judicial settlement might prove to be more useful.

Morocco

[Original: French]

[See reply of Morocco under "General replies".]

Oman

[Original: Arabic]

Negotiation and amicable settlement are among the most important means proposed for settling disputes that may arise against international organizations, since that help facilitate and expedite settlement, considering the esteemed status of international organizations and the lofty objectives which they are constantly seeking to pursue.

Switzerland

[Original: French]

N/A.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

The United Kingdom recognizes the importance of all methods of alternative dispute resolution and the potential benefits of resolving disputes outside of a formal adjudication or court, including via diplomatic means. The relative importance of these methods and their utility varies significantly based on the facts and nature of the dispute in question.

5. Question 5 – From a historical perspective, have there been any changes or trends in the types of disputes arising, the numbers of such disputes and the modes of settlement used?

Austria

[Original: English]

Over time, Austrian headquarters agreements are being updated and brought in line with the European Convention on Human Rights and the evolving case law of the European Court of Human Rights concerning disputes between international organizations and private individuals (see [reply of Austria to] question 2).

The Austrian Constitution contains the possibility for the Austrian Constitutional Court to declare treaties or parts thereof unconstitutional, including for violations of human rights guaranteed by the European Convention on Human Rights, which itself forms part of the Austrian Constitution. This remedy was further facilitated by the introduction, as of 1 January 2015, of the right of a party to a law suit decided by an ordinary court of first instance to challenge the constitutionality of a treaty provision on the occasion of an appeal filed against that court's decisions (so-called application to the Constitutional Court by a party to a law suit).

Several litigants have since made use of this possibility, claiming the unconstitutionality of some headquarters agreements which provided for immunity from Austrian jurisdiction. Whereas the Constitutional Court has rejected such applications at previous occasions as inadmissible for procedural reasons, the first judgment which examined such an application on the merits and declared provisions in a headquarters agreement unconstitutional was delivered by the Constitutional Court on 29 September 2022 (see [reply of Austria to] question 2).

Belgium

[Original: French]

Yes. There are fewer disputes concerning employment contracts before the courts of the host country, since international organizations have started setting up internal appeals mechanisms for their staff members.

Chile

[Original: Spanish]

Chile considers that there have been changes in the types of disputes with international organizations. The field in which international organizations operate has expanded over time. Moreover, the number of organizations has been increasing exponentially. This means that there are now more potential sources of conflict. For example, there is no longer only a State-organization relationship, but also an organization-private party relationship.

As the establishment of the rule of law has progressed, international human rights law, which is closely related, has also been developing. The emphasis here is obviously on establishing guarantees for individuals in relation to the activity of the State.

The centrality of the rights at stake in relation to due process under international human rights law is clear from the frequency with which they are raised before the various universal and regional international human rights organizations serving as protection mechanisms.[1]

The protection of human rights is fundamental to Chile, as reflected in the various judgments that have been issued upholding claims against international organizations. The right of access to court proceedings is not unlimited, and limits may be justified provided that immunity is accompanied by appropriate safeguards, such as the existence of alternative remedies that are accessible or available to the claimant. In this regard, in the field of human rights there are concepts such as "public order", "health", "public morals", "public danger" and "national security" that can be used to protect common values shared by society and therefore provide sufficient grounds for limiting or restricting rights.[2]

In Chile, many human rights are constitutionally guaranteed. Constitutional limits found in internal regimes should be considered potential restrictions on immunities.[3]

Another type of dispute that may arise are disputes related to the accountability of States and international organizations when funds have passed between them on the basis of a treaty on, for example, international assistance. In Chile, an independent entity, the Office of the Comptroller General of the Republic, is responsible for the oversight of government agencies requesting such assistance and must ensure the proper use of the funds.

With regard to potential disputes between international organizations and the State of Chile, there seems to be a tendency in the most recent treaties for the preferred methods of settlement to be consultations and/or international arbitration.

While the first agreements concluded between the Republic of Chile and international organizations, such as the 1952 agreement with the Food and Agriculture Organization of the United Nations (FAO) and the 1969 agreement with the United Nations Educational, Scientific and Cultural Organization (UNESCO), provide for disputes being settled by means of advisory opinions of the International Court of Justice, the subsequent trend demonstrates a preference for direct consultations or negotiations and, failing that, arbitration.

This is the case, for example, of the agreement concluded with the United Nations Special Fund in 1960, concerning assistance from the Special Fund; the agreement concluded with the European Organization for Astronomical Research in the Southern Hemisphere in 1963; and the agreement concluded with the Pan American Health Organization in 2011.

---

[1] For example, the right to a fair trial, provided for in article 6 of the European Convention on Human Rights, is one of the most frequently invoked rights in litigation before the European Court of Human Rights. The same is true of the American Convention on Human Rights, which enshrines this right in its article 8 [American Convention on Human Rights: "Pact of San José, Costa Rica" (San José, 22 November 1969), United Nations, *Treaty Series*, vol. 1144, No. 17955, p. 123].

[2] John Finnis, *Natural Law and Natural Rights*, 2nd ed. (New York, Oxford University Press, 2011), pp. 214–216.

[3] See the analysis on human rights and constitutional limits by Reinisch (*International Organizations before National Courts*, pp. 278–305), concerning various decisions adopted by constitutional courts in different States.

Similarly, in the headquarters agreement between Chile and the Office of the United Nations High Commissioner for Human Rights concluded in 2009, arbitration is explicitly provided for as a method of dispute settlement.

It is the view of Chile that the changes that have taken place in this regard have been aimed at providing for mechanisms that are mutually satisfactory to the parties while also being effective. Thus, methods that encourage consultation between the parties or the use of voluntary mechanisms (good offices, conciliation or mediation) have been developed, with disputes being submitted to a judicial or adjudicatory authority, such as an international court or an arbitration panel, only as a last resort.

With regard to disputes between international organizations and private parties, various dispute settlement mechanisms have been developed, such as administrative tribunals within international organizations, insurance, arbitration and the waiving of immunity.

Côte d'Ivoire

[Original: French]

Historically, disputes involving international organizations in Côte d'Ivoire have been primarily labour disputes between an organization and an employee. This is still the case today. The number of such disputes is constantly changing. Conciliation remains the preferred method of settlement.

Jordan

[Original: Arabic]

[…] Developments in jurisprudence indicate that, in view of the provisions of international conventions relating to judicial immunity, as well as the jurisprudence of the Court of Cassation (full court), it is not possible to refuse to consider a lawsuit filed against a foreign party that enjoys judicial immunity and order the immediate dismissal thereof. The matter depends on whether immunity is invoked or waived. It is, therefore, not related to public order. If a party accepts a lawsuit without invoking its judicial immunity, this action will be considered a waiver of such immunity and the court will continue to hear the case until it is decided. The Jordanian Court of Cassation, in its decision No. 1651/2021 (full court), held that the State does not enjoy absolute judicial immunity. In the past, foreign entities enjoyed absolute judicial immunity before the national judiciary, regardless of whether the dispute was related to its activity as a sovereign international person or the dispute was of a private nature, as in the case of its commercial activity. The judiciary has evolved in most States, and the State no longer enjoys such immunity in disputes relating to its private activities. The criterion that must be applied when determining whether a foreign State enjoys judicial immunity is to distinguish between its actions as an international person engaging sovereign acts, on the one hand, and conduct in which it engages that is not related to its official or diplomatic acts, on the other.

A foreign entity does not enjoy judicial immunity when it engages in a private activity or in contractual actions as a private person, regardless of whether or not such actions are of a commercial nature. Judicial immunity is not absolute; it is limited by the nature of the conduct of the foreign entity. This represents a development in jurisprudence. In addition, there is nothing that prevents international organizations from being parties to the mediation process or resorting to arbitration in private and contractual disputes in which they are a private person.

There have been no significant changes or developments in the types of disputes brought before the Jordanian judiciary involving international organizations. There

is, however, a growing trend towards the use of such alternative dispute resolution methods as arbitration and mediation.

It should be noted that the use of alternative dispute resolution methods is not necessarily a substitute for the national judiciary, but, rather, a complementary approach to dispute resolution. Indeed, Jordan recognizes the importance of alternative dispute resolution and has enacted laws and regulations to promote and support the use of such alternative solutions as arbitration and mediation.

Kingdom of the Netherlands

[Original: English]

In respect of disputes to which international organizations are parties, the Netherlands has not identified any changes or trends in the types of disputes arising, the numbers of such disputes and the modes of settlement used.

Oman

[Original: Arabic]

None.

Switzerland

[Original: French]

N/A.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

The United Kingdom is not aware of any particular trends in this regard given disputes of this nature remain rare.

6. Question 6 – Do you have suggestions for improving the methods of dispute settlement (that you have used in practice)?

Austria

[Original: English]

Austria is occasionally updating its headquarters agreements in line with the newest developments of its international and constitutional obligations.

Belgium

[Original: French]

N/A.

Côte d'Ivoire

[Original: French]

Very few international organizations in Côte d'Ivoire cooperate in procedures relating to disputes to which they are parties. Improving dispute settlement methods might involve, first, awareness-raising, then the summoning of the head of the organization, and lastly the application of punitive measures, such as the suspension of certain privileges.

Jordan

[Original: Arabic]

[…] Several suggestions can be made with regard to improving methods of dispute resolutions, including:

- Alternative dispute resolution methods: Alternative dispute resolution methods, such as mediation and arbitration, can help the parties to a dispute reach a mutually acceptable solution without the need for formal judicial proceedings. These methods are often less expensive and faster than traditional court proceedings, and they allow the parties to have more control over the outcome of their dispute.
- Online dispute resolution: This is a growing field in which technology is used to help parties resolve disputes online. It can be faster, more efficient and less expensive than traditional dispute resolution methods.
- Early conflict resolution: Early conflict resolution involves addressing conflicts as soon as they arise, rather than waiting for the disagreement between the parties to the conflict to escalate. This approach can help prevent conflicts from becoming more complex and difficult to resolve with the passage of time.

In general, there are many different methods of dispute resolution that can be used, depending on the nature of the dispute and the preferences of the parties involved.

Kingdom of the Netherlands

[Original: English]

The Kingdom of the Netherlands currently has no suggestions for improving the methods of dispute settlement.

Oman

[Original: Arabic]

The Sultanate of Oman proposes that prior coordination and agreement be made to settle disputes, if such disputes take place between international organizations and the host country or the countries that practice their activities through those organizations, either by peaceful means via diplomatic channels or the appropriate mechanism agreed upon, or resorting to international arbitration.

Switzerland

[Original: French]

N/A.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

The methods of dispute settlement will vary significantly depending on the nature and complexity of the dispute. In general terms the United Kingdom would welcome improvements in the efficiency of dispute resolution methods to ensure disputes are resolved as quickly and efficiently as possible.

7. Question 7 – Are there types of disputes that remain outside the scope of available dispute settlement methods?

Austria

[Original: English]

Generally, all types of disputes between the Government and international organizations emanating from headquarters agreements as well as between private parties and an international organization are covered by the dispute settlement mechanisms foreseen in the headquarters agreements. However, exceptions might exist depending on the individual headquarters agreement and the date of its conclusion.

In addition, agreements other than headquarters agreements between Austria and international organizations might foresee different modes of dispute settlement.

Belgium

[Original: French]

Matters concerning the settlement of commercial disputes and labour law disputes should not cause problems if there are internal appeals mechanisms that effectively protect the rights of individuals who suffer a prejudice caused by an organization, as guaranteed under the [European Convention on Human Rights]. The settlement of claims engaging the extracontractual responsibility of organizations is not generally the subject of similar internal mechanisms. This applies, for example, in cases where, absent any contractual relationship with an international organization, an individual falls victim to the consequences of the operational activities of the organization.

Chile

[Original: Spanish]

Disputes involving private parties generally fall outside the scope of the available dispute settlement methods, since the vast majority of international organizations do not have mechanisms in place for the settlement of disputes with private parties. This means that the national courts hear the cases and subject organizations to their jurisdiction, despite the immunities of those organizations.

It is necessary for international organizations to provide settlement mechanisms for such disputes, since the current situation could give rise to conflicts between States and organizations. Moreover, the existence of such mechanisms would resolve the fundamental problem created by these situations, which is the violation of the private party's right to access to justice.

Côte d'Ivoire

[Original: French]

No. Everything depends on the good faith and cooperation of the international organization in question.

Jordan

[Original: Arabic]

[…] It is acceptable, in accordance with the jurisprudence referenced above and without breaching the State's treaty obligations, to file a lawsuit as a means of settling a dispute with an international organization that arises when it engages in a private activity or as a result of contractual actions that it carries out as a private person, as well as in relation to commercial or contractual activity, or to compensation for damage resulting from an action performed by it or by one of its representatives that is not related to its actions as a person under general international law. Resorting to alternative dispute resolution methods is permissible in all such disputes. The only exceptions are matters that, under the law, cannot be referred to mediation or arbitration, including criminal matters, as well any other matters that cannot be referred to mediation or arbitration under the law, as stipulated in article 10 (d) of the Arbitration Act (No. 31 of 2001), which provides as follows: "The provisions of any other law notwithstanding, and without prejudice to the legal status quo prior to the entry into force of this amended Act, any prior agreement regarding arbitration shall be null and void in the following cases: (1) consumer contracts drawn out on pre-printed forms and (2) employment contracts."

Kingdom of the Netherlands

[Original: English]

The Kingdom of the Netherlands is not aware of any types of disputes that remain outside the scope of available dispute settlement methods.

Malaysia

[Original: English]

The legal system provides resolutions for many different types of disputes. Some disputants will not reach an agreement through a collaborative process. Some disputes need the coercive power of the State to enforce a resolution. Perhaps more importantly, many people want a professional advocate when they become involved in a dispute, particularly, if the dispute involves perceived legal rights, legal wrongdoing, or threat of legal action against them. The most common form of judicial dispute resolution is litigation.

However, due to the antagonistic nature of litigation, collaborators frequently opt for solving disputes privately. Alternative dispute resolution is an extrajudicial process used to resolve a conflict between and among individuals, business entities, government agencies and States, such as arbitration, collaborative law, and mediation. In this regard, Malaysia has set a judicial system that would cater for all types of disputes.

Litigation

In general, a dispute may be resolved through civil litigation by commencing a civil action in court. A civil action is normally commenced by the plaintiff either by way of a writ or by an originating summons. In addition to that, judicial review is also a court process for dispute settlement by which decisions of the government or government agencies can be challenged in the High Court by persons affected. In principle, the court in a judicial review application is concerned with the legality of the decision-making process of the executive and not with the merits of the decision.

The jurisdiction granted to courts hearing and trying civil actions is provided for in the Courts of Judicature Act 1964 [Act 91] and Subordinate Courts Act 1948

[Act 92]. The rules governing the procedures in courts are governed by their respective rules of procedures as follows:

(*a*) Rules of Court 2012;

(*b*) Rules of the Court of Appeal 1994; and

(*c*) Rules of the Federal Court 1995.

In order to ensure smooth operations of the judicial system in Malaysia while at the same time providing better judicial service in terms of expertise, a few "special" courts with specific expertise in a particular field of law were established. The existing special designated courts in Malaysia, inter alia, are as follows:

(*a*) Construction Court;

(*b*) Cyber Court;

(*c*) Commercial Court;

(*d*) Intellectual Property Court; and

(*e*) Admiralty Court.

For a less formal and faster adjudication process of a specific type of dispute albeit being more administrative in nature, Malaysia has established a few tribunals that are accessible to the public without having to go through complicated court procedures. The tribunals established in Malaysia are, *inter alia*, as follows:

(*a*) Tribunal for Consumer Claims under Consumer Protection Act 1999 [Act 599];

(*b*) Strata Management Tribunal under Strata Management Act 2013 [Act 757]; and

(*c*) Cooperative Tribunal under Cooperative Societies Act 1993 [Act 502].

Notwithstanding the above, Malaysia has long introduced alternative dispute resolution as alternatives for conventional court litigation. Generally, civil litigation can be regarded as a lengthy process. Sometimes, litigation in any particular jurisdiction may not be suitable in case of disputes between parties of two different jurisdictions because one of them will not be familiar with the system of administration of justice in the particular jurisdiction and may even not have trust in the system in place in that jurisdiction. In these cases, the difficulties may be overcome in alternative dispute resolution. It is always beneficial when the parties are able to reach an amicable settlement or resort to alternative dispute resolution to resolve their disputes or differences.

There are three alternative dispute resolution mechanisms applicable to the Malaysian legal fraternity, namely:

(*i*) mediation or conciliation;

(*ii*) arbitration; and

(*iii*) adjudication.

Mediation or conciliation

In practice, for court-annexed mediation, courts in Malaysia encourage parties in disputes to initiate mediation at the earliest stage possible as an attempt to settle disputes amicably without going through the normal court's procedures. This court-annexed mediation programme will be integrated with the court process to ensure mediation is available to all litigants. A Mediation Centre was established in Kuala Lumpur Court Complex where High Court Judges, Session Court Judges and

Magistrates may direct parties to mediate a settlement. In some occasions, mediation is also conducted by the presiding judges.

The Malaysian Mediation Centre was established in 1999, under the auspices of the Bar Council with the objective of promoting mediation as a means of alternative dispute resolution and providing a proper avenue for successful dispute resolutions. This was the end result of the recommendations of the Alternative Dispute Resolution Committee set up by the Bar Council in 1995 to look into the possibility of establishing a world-class Mediation Centre in Malaysia.

In addition to the above, Malaysia had also legislated Mediation Act 2012 [Act 749] to encourage and promote mediation as a method of alternative dispute resolution by providing for the process of mediation, thereby facilitating the parties in disputes to settle disputes in a fair, speedy and cost-effective manner. Pursuant to section 2(a) of Act 749, mediation is widely applicable to various personal and commercial disputes save for the following disputes or court proceedings:

(*a*) Constitutional law;

(*b*) Prerogative writs;

(*c*) Temporary/ permanent injunctions;

(*d*) Election petitions under Election Offences Act 1954;

(*e*) Proceedings under the Land Acquisition Act 1960;

(*f*) Judicial review;

(*g*) Appeals;

(*h*) Revision;

(*i*) Native Court; and

(*j*) Any criminal matter.

Generally, parties are more likely to accept and comply with the settlement agreement as mediation focuses on and addresses the needs and interests of the parties. Therefore, the dispute between the parties is more effectively resolved by way of mediation than litigation. In addition, mediation is a method that is more favourable to parties who wish to preserve family or business relationships. Even if the parties fail to reach an amicable settlement at the end of mediation, the parties may proceed to pursue their respective rights in litigation or arbitration.

Apart from that, all disclosure, concessions, admissions and communication made during the entire process of mediation are strictly “without prejudice”, confidential and remain known only to the parties and the mediator involved. However, parties may waive the without prejudice privilege where both parties consent to the waiver.

Arbitration

Another alternative dispute resolution tool is arbitration as governed under Arbitration Act 2005 [Act 646]. Act 646 provides a clear and efficient process for conducting domestic and international arbitrations in Malaysia. Arbitration is a private and judicial determination of a dispute by an independent third party.

One significant advantage of arbitration is the guarantee of confidentiality and privacy as opposed to court proceedings which are generally open to the public. Privacy and confidentiality may be important in many business transactions, particularly where trade secrets are involved in the subject of dispute between the

parties. In the case of court litigations, it may not be able to protect such confidentiality from being disclosed to the public.

The importance of arbitration does not merely stop with commercial litigation. It may be the only solution in nation-to-nation disputes. In such cases, the dispute cannot be practically litigated in the courts of either country, as one nation is unlikely to accept the decision made by the court of another nation. The only way to overcome this is perhaps by submitting the dispute to an arbitral tribunal made of arbitrators who have no nexus to either country.

The difference between mediation and arbitration is that parties maintain full control of the workings and outcome of the mediation. On the other hand, in arbitration the arbitrator decides the outcome of the proceedings and the parties are bound by that decision. Arbitration is similar to court proceedings in that the arbitrator will decide the dispute. The difference is that parties can decide on the appointment of the arbitrator and the rules and procedures to be applied in the arbitration.

Parties to a contract may agree through an arbitration clause to refer any dispute that might arise in respect of that contract to arbitration. Parties may also agree to refer an existing dispute to arbitration even though there was no such prior agreement between them. The Arbitration Act 2005 is the law governing arbitration in Malaysia. The UNCITRAL Model Law on International Commercial Arbitration has been adopted as part of the working provisions of the Act. Pursuant to the Arbitration Act 2005, the Asian International Arbitration Centre (Malaysia), formerly known as the Kuala Lumpur Regional Centre of Arbitration, is the default appointing body.

Malaysia has a long history of using arbitration as a dispute resolution mechanism and is considered a regional arbitration hub in South-East Asia. In 1978, the Regional Centre for Arbitration Kuala Lumpur was established under the auspices of the Asian-African Legal Consultative Organization. It was subsequently renamed as the Kuala Lumpur Regional Centre of Arbitration in April 2010 and then the Asian International Arbitration Centre in February 2018. The Regional Centre for Arbitration Kuala Lumpur was the first regional centre established by the Asian-African Legal Consultative Organization in the Asia Pacific region to provide institutional support as a neutral and independent venue for the conduct of domestic and international arbitration proceedings.

The Regional Centre for Arbitration Kuala Lumpur was also established pursuant to a host country agreement with the Government of Malaysia. Being a non-profit, non-governmental and independent international body, it was also notably the first arbitral centre in the world to adopt the UNCITRAL Arbitration Rules 1976.

Adjudication

In Malaysia, the Construction Industry Payment & Adjudication Act 2012 [Act 746] was enacted to facilitate regular and timely payment, and to provide a mechanism for speedy dispute resolution for construction contracts in respect of work done and services rendered through adjudication, as well as remedies for the recovery of payment.

Act 746 applies to every construction contract made in writing relating to construction work, which is also inclusive of the oil and gas industry and telecommunications, carried out wholly or partly within Malaysia and includes a construction contract entered into by the Government. “Construction contract” has been defined in Act 746 to include construction work contracts and consultancy services contracts. Additionally, Act 746 applies to both local and international contracts, provided the subject construction work is carried out wholly or partly in Malaysia. Act 746, however, does not apply to a construction contract entered into by

an individual for any construction work in respect of any building which is less than four storeys high and which is wholly intended for his or her own occupation.

Adjudication has a judicial element in that the adjudicator hears both sides and decides the dispute. The main thing that distinguishes arbitration and litigation from adjudication is that arbitration and litigation are usually the last options resorted to only when parties are ready to terminate the contract. In contrast, adjudication is about getting a quick neutral decision on disputes relating to payments commonly arising in construction projects. It is a summary procedure and an interim solution which in theory should not stop or delay the progress of the contract or works.

In summary, the dispute settlement mechanisms available in Malaysia are rather comprehensive and various types of disputes have been covered under the law aside from the explicit exclusion of matters under public law namely tax law, criminal law, insolvency, and family law. Thus far, there are no other types of disputes that are known outside the above-mentioned dispute settlement methods.

Oman

[Original: Arabic]

None.

Switzerland

[Original: French]

N/A.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

There may be circumstances where there is no express provision for dispute settlement, but there are options for parties to a dispute to agree a method of dispute resolution in any event.

8. Question 8 – Does your organization have a duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character under the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, or an equivalent treaty? How in practice has your organization interpreted and applied the relevant provisions?

Austria

[Original: English]

Austria is bound by its obligations under constitutional and international law, such as the European Convention on Human Rights, which is a directly applicable treaty obligation under international law and enjoys the status of Austrian constitutional law, or the Charter of Fundamental Rights of the European Union, which is also directly applicable. These obligations are reflected in the provisions for the settlement of disputes in the more recent headquarters agreements. One such example emanating from the European Convention on Human Rights is the need to include provisions for an independent mechanism for the settlement of labour disputes into headquarters agreements (see [reply of Austria to] question 2).

In addition, the Austrian Headquarters Act of 2021 stipulates that dispute settlement provisions must be included in headquarters agreements. Article 10, paragraph 2, of that Act provides that agreements granting privileges and immunities

to international organizations foresee that the organization waives immunity if it considers that such immunity would impede the normal course of justice and that it can be waived without prejudice to the interests of the organisation.

Article 10, paragraph 3, regulates that headquarters agreements must not run counter to the obligations of Austria under international law and human rights and therefore have to foresee effective redress mechanisms in the case of disputes.

Article 10, paragraph 5, stipulates that disputes that are exempt from Austrian jurisdiction must be dealt with by arbitration.

Belgium

[Original: French]

N/A.

Côte d'Ivoire

[Original: French]

This question is not directed at States.

Jordan

[Original: Arabic]

[See Jordan's reply to question 7].

Kingdom of the Netherlands

[Original: English]

Not applicable.

Malaysia

[Original: English]

Malaysia had ratified the 1946 Convention on the Privileges and Immunities of the United Nations ("1946 Convention") and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies ("1947 Convention") on 28 October 1957 and 29 March 1962, respectively.

Due to the dualist nature of Malaysia's legal framework, domestic legislation must be enacted in order for international law, i.e. treaties or conventions, to have an effect and to be operative in Malaysia. Therefore, without express incorporation into domestic law by an Act of Parliament following the ratification of a convention, the provisions of international obligations in the said convention do not have any binding effect.[1]

Following Malaysia's ratification of the 1946 and 1947 Conventions, Malaysia had enacted the International Organizations (Privileges and Immunities) Act 1992 [*Act 485*] in which the 1946 and 1947 Conventions had been incorporated into the Act, for the purpose to give effect to both conventions in Malaysia. Sections 1A and 1B of Act 485 provide provisions as follows:

[1] *Airasia Bhd v. Rafizah Shima Mohamed Aris* [2015] 2 CLJ 510.

Application of the Convention on the Privileges and Immunities of the United Nations

1A. The Articles set out in the ***Seventh Schedule*** *(being Articles of the Convention on the Privileges and Immunities of the United Nations)* ***shall have the force of law in Malaysia****.*

Application of the Convention on the Privileges and Immunities of the Specialised Agencies

1B. (1) The Articles set out in the ***Eighth Schedule*** *(being Articles of the Convention on the Privileges and Immunities of the Specialised Agencies)* ***shall have the force of law in Malaysia****.*

Based on the above-mentioned provisions, both conventions have been incorporated into the Seventh and Eighth Schedules of Act 485. It is observed that both Schedules had retained the original language used in the 1946 and 1947 Conventions. Of this, both Schedules contained a chapter on the Settlement of Disputes which can be seen as follows:

SEVENTH SCHEDULE

[Sections 1A and 6A]

ARTICLES OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS HAVING THE FORCE OF LAW IN MALAYSIA

...

Article VIII

SETTLEMENT OF DISPUTES

Section 29

The United Nations shall make provisions for appropriate modes of settlement of

(a) ***disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party****;*

(b) *disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General*

EIGHTH SCHEDULE

[Sections 1B and 6B]

ARTICLES OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALISED AGENCIES HAVING THE FORCE OF LAW IN MALAYSIA

...

Article IX

SETTLEMENT OF DISPUTES

Section 31

Each specialised agency shall make provision for appropriate modes of settlement of

(a) disputes arising out of contracts or other disputes of private character to which the specialised agency is a party*;*

(b) disputes involving any official of a specialised agency who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with the provisions of section 22.

By referring to the above Schedules, it is observed that the duty to make provisions for appropriate modes of settlement arising out of contracts or other disputes of a private law character is imposed on the United Nations and specialized agencies.

In practice, even though under the law the duty to make provisions for appropriate modes of settlement is imposed on the United Nations and specialized agencies, Malaysia, through the Attorney General's Chambers of Malaysia, ensures that the clause regarding settlement of disputes be incorporated in the agreement between the Government of Malaysia and the United Nations or specialized agencies.

Malaysia's action and duty regarding this matter are in line with the principle underlined under Article 2(3) of the Charter of the United Nations whereby all Member States are obliged "to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Further, Malaysia also respects the principle guided under Article 33 of the Charter of the United Nations which provides that the parties to any disputes which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial decision, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Oman

[Original: Arabic]

Lawsuits related to real property, or commercial and civil lawsuits, estates and inheritance, do not include diplomatic immunity in accordance with the Vienna Convention of 1961, and are subject to local laws and the local jurisdiction, such as the Civil and Commercial Procedure Law and the Personal Status Law.

As for the Convention on the Privileges and Immunities of the Specialized Agencies of 1947, the Sultanate of Oman is in the process of acceding to this Convention soon.

However, the Sultanate of Oman concludes several agreements and mutual memorandums of understanding with international organizations that regulate all agreed issues and activities.

Switzerland

[Original: French]

N/A.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

While questions 8–11 seem to be aimed at organizations, the United Kingdom makes the following comments in case they are helpful. The United Kingdom's obligations regarding privileges and immunities are implemented via statute in domestic law. For international organizations the International Organisations Acts 1968 and 1981 make provision for immunity from suit and legal process to be

conferred on certain international organizations, and privileges and immunities in relation to certain officials.

In relation to disputes of a private law nature (*acta res gestionis*) the relevant immunity may be a complete procedural defence so that the matter cannot be resolved by a court. If they are not, then the matter is liable to litigation in the normal way.

An international organization can waive immunity where it enjoys (or its officials enjoy) immunity, and individual contracts may be negotiated to include a prior waiver or submission to the jurisdiction in the event of a dispute.

9. Question 9 – Are there standard/model clauses concerning dispute settlement in your treaty and/or contractual practice? Please provide representative examples.

Austria

[Original: English]

Immunity from jurisdiction and other actions

(1) The ORGANIZATION shall enjoy immunity from jurisdiction and enforcement, except:

(a) to the extent that the ORGANIZATION shall have expressly waived such immunity in a particular case;

(b) in the case of civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the ORGANIZATION, or in respect of any infringement of laws and regulations governing the keeping, operation and use of motor vehicles;

(c) in the case of attachment, pursuant to a decision by the judicial authorities, of the salary, emoluments or indemnities owed by the ORGANIZATION to an employee of the ORGANIZATION, unless the ORGANIZATION informs the Authorities within 14 days of the date on which it is notified of said decision by the Authorities that it does not waive its immunity.

(2) Without prejudice to paragraph 1, the property and assets of the ORGANIZATION, wherever situated, shall be immune from any form of seizure, confiscation, expropriation and sequestration or any other form of judicial or administrative restraint.

(3) Any dispute between the ORGANIZATION and a private party shall be finally settled by a tribunal composed of a single arbitrator appointed by the Secretary General of the Permanent Court of Arbitration in accordance with the relevant Optional Rules for Arbitration Involving International Organizations and Private Parties. The tribunal 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 tribunal shall apply such rules of international law and general principles of law as may be applicable. Matters concerning the interpretation of the Agreement on the Establishment of the ORGANIZATION, shall not be within the competence of the tribunal. Employment disputes between the ORGANIZATION and its employees shall be settled by an effective dispute resolution mechanism that protects the rights of the employees in accordance with the European Convention on Human Rights, pursuant to the ORGANIZATION's internal regulations.

Purpose of privileges and immunities

(1) The privileges and immunities provided for in this Agreement are not designed to give personal advantages to the persons to whom they are accorded. They are granted solely to ensure that the ORGANIZATION is able to perform its official

activities unimpeded at all times and that the persons to whom they are accorded have complete independence. The ORGANIZATION shall engage to encourage its officials to comply with their legal obligations.

(2) The ORGANIZATION shall waive immunity where it considers that such immunity would impede the normal course of justice and that it can be waived without prejudicing the interests of the ORGANIZATION.

Settlement of disputes

Unless the Parties decide otherwise, any dispute concerning the interpretation or application of the present Agreement which cannot be settled by negotiation shall be submitted to arbitration by a tribunal composed of a single arbitrator appointed by the Secretary General of the Permanent Court of Arbitration in accordance with the relevant Optional Rules for Arbitration Involving International Organizations and States, as in force on the date of signature of this Agreement. Such arbitration shall be final and binding. Each Party may however request the Secretary General of the Permanent Court of Arbitration to immediately appoint such an arbitrator to examine a request for provisional measures to protect its rights under the present Agreement. The place of arbitration shall be Vienna and the language to be used in the proceedings of the tribunal shall be English.

Belgium

[Original: French]

A standard provision, inserted into most headquarters agreements concluded between Belgium and international organizations, obliges the personnel, staff members and agents of these organizations to take out a civil liability insurance policy for the use of any motor vehicle. This clause provides explicitly that there is no immunity from jurisdiction, which these persons normally enjoy, in cases of breach of the regulations on the movement of motor vehicles or of damages caused by a motor vehicle.

Chile

[Original: Spanish]

There are no standard or model clauses *per se* in treaties between Chile and international organizations. However, the most frequently used clauses are the following.

(a) Treaties in which the procedure enshrined in sections 24 and 32 of the Convention on the Privileges and Immunities of the Specialized Agencies is provided for as a method of dispute settlement contain a provision along the following lines:

> Any dispute between the Government and the [relevant international organization] concerning the interpretation or application of this Agreement or any supplementary agreement, or any question affecting the Headquarters of the Regional Bureau or relations between the [relevant international organization] and the Government shall be resolved in accordance with the procedure indicated in section 24 and section 32 of the Convention on the Privileges and Immunities of the Specialized Agencies.

(b) More recent treaties in which consultation and arbitration is preferred include clauses along the following lines:

> Any dispute between the [relevant international organization] and the Government arising out of or relating to this Agreement which cannot be settled by negotiation or other mutually agreed procedure shall be submitted to

arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chair. If within 30 days of the request for arbitration either Party has not appointed an arbitrator or if within 15 days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Côte d'Ivoire

[Original: French]

This question is not directed at States.

Jordan

[Original: Arabic]

[…] A very common stipulation is the "arbitration clause", which provides that disputes shall be settled through binding arbitration, instead of in the courts. This clause usually sets out the process of selecting an arbitrator or panel of arbitrators, as well as the rules that will govern the arbitration proceedings.

Another common stipulation is the "mediation clause". This clause provides that disputes shall be settled through mediation, which is a process whereby a neutral third party (mediator) helps the parties reach a mutually acceptable solution.

In addition, some contracts and agreements include clauses providing for negotiation and conciliation as the first step in dispute resolution. These clauses require the parties to engage in good-faith negotiations or conciliation efforts before resorting to more formal dispute resolution processes, such as arbitration or litigation.

Kingdom of the Netherlands

[Original: English]

In host State agreements to be negotiated between an international organization and the Kingdom of the Netherlands, the Kingdom uses the following model clauses concerning dispute settlement:

Settlement of disputes with third parties

International organization shall make provisions for appropriate modes of settlement of:

(a) disputes arising out of contracts and other disputes of a private law character to which the international organization is a party; and

(b) disputes involving any person referred to in this Agreement who, by reason of his or her official position or function in connection with the international organization, enjoys immunity, if such immunity has not been waived by the Secretary-General [of the international organization].

Settlement of differences on the interpretation or application of this Agreement or supplementary arrangements or agreements

1. All differences arising out of the interpretation or application of this Agreement or supplementary arrangements or agreements between the Parties shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 of this Article within three months following a written request by one of the Parties to the difference, it shall, at the request of either Party, be referred to a Tribunal of three arbitrators. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairperson of the Tribunal. If, within thirty days of the request for arbitration, a Party has not appointed an arbitrator, or if, within fifteen (15) days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint the arbitrator referred to. The Tribunal shall determine its own procedures, provided that any two arbitrators shall constitute a quorum for all purposes, and all decisions shall require the agreement of any two arbitrators. The expenses of the Tribunal shall be borne by the Parties as assessed by the Tribunal. The arbitral award shall contain a statement of the reasons on which it is based and shall be final and binding on the Parties.

Malaysia

[Original: English]

In practice, many treaties follow standardized Bilateral Investment Treaties models which contain model dispute resolution clauses that include tiered solutions. Most clauses include diplomatic negotiations at the first level followed by the constitution of an International Centre for Settlement of Investment Disputes tribunal in case a solution is not reached at the diplomatic level. The following are standard clauses concerning dispute settlement:

Article 10[1]

SETTLEMENT OF INVESTMENTS DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY

1. Any dispute between a Party (hereinafter referred to in this Article as the "disputing Party") and an investor of the other Party (hereinafter referred to in this Article as the "disputing investor") that has incurred loss or damage by reason of or arising out of an alleged breach of any rights conferred by this Agreement with respect to the investment of the disputing investor, shall as far as possible, be settled by the parties to the dispute in an amicable way.

2. If the dispute cannot be settled within six (6) months from the date on which the dispute has been notified by either party, it shall be submitted upon request and choice of the disputing investor:

(a) to conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter referred to in this Article as "ICSID") done at Washington on 18 March 1965, in the event both Parties shall have become a party to the Conventions; or

(b) to an international ad hoc arbitral tribunal established under the Arbitration Rules of UNCITRAL; or

(c) to the Kuala Lumpur Regional Centre for Arbitration (KLRCA); or

(d) to the competent court of the disputing Party.

Each Party gives its consent to the submission of disputes to conciliation or arbitration set out in subparagraphs (a), (b) or (c). Such consent is conditional upon

[1] Agreement between the Government of Malaysia and the Government of the Republic of San Marino on the Promotion and Protection of Investments.

the submission of the disputing investor's written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals of either Party, or other dispute settlement procedures, any proceedings with respect to any measure alleged to constitute a breach of any rights conferred by this Agreement with respect to the investment of the disputing investor.

3. An investor shall not be entitled to make a claim, if more than three (3) years have elapsed from the date on which the investor first acquired, or should have first acquired knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

4. The disputing investor who intends to submit the dispute pursuant to paragraph 2 shall give to the disputing Party written notice of intent to do so at least ninety (90) days before the claim is submitted. The notice of intent shall specify:

(a) the name and address of the disputing investor and its legal representative;

(b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the provisions of this Agreement alleged to have been breached;

(c) the relief sought, and where appropriate, the approximate amount of damages claimed; and

(d) the dispute settlement procedures set forth in paragraph 2 which the disputing investor will seek.

5. The applicable arbitration rules shall govern the arbitration referred to in this Article except to the extent modified in this Article.

6. Unless the disputing investor and the disputing Party (hereinafter referred to as "the disputing parties") agree otherwise, an arbitral tribunal established under subparagraphs 2(a), (b) and (c) shall comprise three (3) arbitrators, one (1) arbitrator appointed by each of the disputing parties and the third, who shall be presiding arbitrator, appointed by the two arbitrators appointed by the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator within sixty (60) days from the date on which the investment dispute was submitted to arbitration, the Chairman of the Administrative Council of ICSID in the case of arbitration referred to in subparagraph 2(a), or the Secretary-General of the PCA in the case of arbitration referred to in subparagraph 2(b), or the Director of KLRCA, in the case of arbitration referred to in subparagraph 2(c), on the request of either of the disputing parties, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed from the ICSID, PCA or KLRCA Panel of Arbitrators respectively subject to the requirements of paragraph 7.

7. Unless the disputing parties agree otherwise, the third arbitrator shall not be of the same nationality as the disputing investor, nor be a national of the disputing Party, nor have his or her usual place of residence in the territory of either Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity.

8. The award shall include:

(a) a judgment as to whether or not there has been a breach by the disputing Party of any rights conferred by this Agreement in respect of the disputing investor and its investments; and

(b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following:

(i) payment of monetary damages and applicable interest; and

(ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

Costs may also be awarded in accordance with the applicable arbitration rules.

9. The award rendered in accordance with paragraph 8 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of any such award and provide in the disputing Party for the enforcement of such award in accordance with its relevant laws and regulations.

10. Neither Party shall, in respect of a dispute which one of its investors shall have submitted to arbitration in accordance with paragraph 2, give diplomatic protection, or bring an international claim before another forum, unless the other Party shall have failed to abide by, and comply with, the award in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

11. Each disputing Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the presiding arbitrator in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the disputing parties. The arbitral tribunal may, however, apportion each of such costs between the Parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

12. The provisions of this Article shall not prejudice the Parties from using the procedures specified in Article 11 (Settlement of Disputes between the Parties) where a dispute concerns the interpretation or application of this Agreement.

Article 11

SETTLEMENT OF INVESTMENTS DISPUTES BETWEEN THE PARTIES

1. Disputes between the Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled by consultation.

2. If the dispute between the Parties cannot thus be settled, within six (6) months it shall upon the request of either Party be submitted to an arbitral tribunal in accordance with the provisions of this Article. Such submission shall be notified in writing to other Party.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within three months of the receipt through diplomatic channels of the request for arbitration, each Party shall appoint one member of the arbitral tribunal. Those two members shall then select a national of a third State who on approval by the two Parties shall be appointed Chairman of the arbitral tribunal. The Chairman shall be appointed within two (2) months from the date of appointment of the other two members.

4. If the necessary appointments have not been made within the periods specified in paragraph 3 of this Article, either Party may, in the absence of any other agreement, invite the Secretary-General of the PCA to make the necessary appointments. If the Secretary-General is a national of either party or is otherwise prevented from discharging the said function, the official of the PCA next in seniority who is not a national of either Party or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties. Each Party shall bear the cost of its own member of the arbitral tribunal and of its representation in the arbitral proceeding; the cost of the Chairman and the remaining costs shall be borne in equal parts by the

Parties. The arbitral tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.

6. The arbitral tribunal shall determine its own procedures after consultation with the Parties."

Apart from that, the other standard clauses pertaining to dispute settlement included in the Memorandum of Understanding are provided as follows:

SETTLEMENT OF DISPUTES

Any difference or dispute concerning the interpretation, implementation and/or application of this Agreement shall be settled amicably through mutual consultation and/or negotiation between the Parties concerned through diplomatic channels.

Article 15[2]

SETTLEMENT OF DISPUTES

Any dispute between Parties concerning the interpretation or application of, or compliance with this Agreement shall be settled amicably by consultation or negotiation.

Article 11[3]

DISPUTE SETTLEMENT MECHANISM

1. The Parties shall, within 1 year after the date of entry into force of this Agreement, establish appropriate formal dispute settlement procedures and mechanism for the purposes of this Agreement.

2. Pending the establishment of the formal dispute settlement procedures and mechanism under paragraph 1 above, any disputes concerning the interpretation, implementation or application of this Agreement shall be settled amicably by consultations and/ or mediation.

3. Given the foregoing, it is clear that the parties are encouraged to resolve their disputes amicably through alternative dispute resolution such as consultation, negotiation or mediation without reference to international tribunal.

Oman

[Original: Arabic]

An example of one provision of the articles of bilateral agreements that regulate the issue of disputes: Any dispute arising out of the implementation of this agreement or any of its articles shall be settled amicably between the two parties through diplomatic channels.

Switzerland

[Original: French]

In accordance with article 28 of the Federal Act of 22 June 2007, on the privileges, immunities and facilities and the financial subsidies granted by

[2] Agreement on the Establishment of the ASEAN [Association of Southeast Asian Nations] Co-ordinating Centre for Humanitarian Assistance on Disaster Management.

[3] Framework Agreement on Comprehensive Economic Co-operation between the Association of South East Asian Nations and the People's Republic of China.

Switzerland as a host State (Host State Act),[1] the headquarters agreements concluded between the Federal Council and international organizations enjoying immunities in Switzerland provide that each organization must set up appropriate mechanisms for the settlement of disputes arising from contracts to which the organization is a party, or other disputes concerning a point of private law. The obligation to set up an alternative mechanism for the settlement of disputes in place of referral to a judicial authority is the "counterpart" of the immunity granted. Switzerland recognizes the importance of preserving the immunities of international organizations in order to ensure their independence and freedom of action, but also to ensure that private parties are able to exercise their right of access to justice.

Headquarters agreements also contain a dispute settlement clause pertaining to disputes between the host State and the international organization that may arise from the application of the agreement itself.

The following are some examples of texts contained in headquarters agreements concluded by Switzerland:

(a) Agreement on privileges and immunities of the United Nations concluded between the Swiss Federal Council and the Secretary-General of the United Nations on 11 June/1 July 1946.[2]

Article VIII – Settlement of disputes

The United Nations shall make provisions for appropriate modes of settlement of:

(a) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;

(b) Disputes involving an official of the United Nations who by reason of his or her official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Any difference between the United Nations and the Swiss Federal Council concerning the interpretation or application of this Agreement or of any supplementary arrangement or agreement which is not settled by negotiation shall be submitted for decision to a board of three arbitrators; the first to be appointed by the Swiss Federal Council, the second by the Secretary-General of the United Nations, and the third, the presiding arbitrator, by the President of the International Court of Justice, unless in any specific case the parties agree to resort to a different mode of settlement.

(b) Agreement of 11 March 1946 between the Swiss Federal Council and the International Labour Organization concerning the legal status of the International Labour Organization in Switzerland[3]

Article 23 – Private disputes

The International Labour Organization shall make provision for appropriate methods of settlement of:

(a) Disputes arising out of contracts and other disputes of a private law character to which the International Labour Organization is a party;

[1] https://www.fedlex.admin.ch/eli/cc/2007/860/fr.
[2] https://www.fedlex.admin.ch/eli/cc/1956/1092_1171_1183/fr.
[3] https://www.fedlex.admin.ch/eli/cc/1956/1103_1182_1194/fr.

(b) Disputes involving an official of the International Labour Organization who by reason of his or her official position enjoys immunity, if such immunity has not been waived by the Director.

Article 27 – Jurisdiction

1. Any divergence of opinion concerning the application or interpretation of this agreement or the arrangement for its execution which has not been settled by direct conversations between the parties may be submitted by either party to a tribunal of three members which shall be established on the coming into force of this agreement.

2. The Swiss Federal Council and the International Labour Organization shall each choose one member of the tribunal.

3. The judges so appointed shall choose their president.

4. In the event of disagreement between the judges on the choice of a president, the president shall be chosen by the President of the Supreme Court of the Netherlands at the request of the members of the tribunal.

5. The tribunal may be seized of an application by either party.

6. The tribunal shall determine its own procedure.

(c) Agreement of 2 June 1995 between the Swiss Confederation and the World Trade Organization to determine the legal status of the Organization in Switzerland[4]

Article 44 – Private disputes

1. The Organization shall take appropriate measures to establish a system for the settlement of:

(a) Disputes arising from contracts to which the Organization is a party and other disputes involving a point of private law;

(b) Disputes involving an official of the organization who by reason of his or her official position enjoys immunity, if such immunity has not been waived in accordance with article 38.

2. At the request of either party, the Swiss authorities shall assist in the amicable settlement of the above-mentioned disputes.

Article 48 – Settlement of disputes

1. Any difference of opinion between the parties to this agreement concerning the application or interpretation of this agreement which is not settled by direct talks between the parties may be referred by either party to a three-member arbitral tribunal.

2. The Swiss Federal Council and the Organization shall each appoint a member of the arbitral tribunal.

3. The members so appointed shall select by mutual agreement the third member, who shall chair the arbitral tribunal. If no agreement is reached within a reasonable period of time, the third member shall be designated by the President of the International Court of Justice, at the request of either party.

4. The tribunal shall determine its own procedure.

5. The arbitral award shall be binding on the parties to the dispute. It shall be final and without appeal.

[4] https://www.fedlex.admin.ch/eli/cc/1997/816_816_816/fr.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

In contractual practice the United Kingdom frequently uses model contractual clauses for example Schedule 23 of the Model Services Contract – GOV.UK (www.gov.uk)[1].

The United Kingdom is not aware of standard dispute settlement clauses although it is likely that the United Kingdom will use similar wording in similar agreements. Examples of recent free trade agreements concluded by the United Kingdom are available at https://www.gov.uk/government/collections/the-uks-trade-agreements.

10. Question 10 – Does "other disputes of a private law character" encompass all disputes other than those arising from contracts? If not, which categories are not included? What has been the practice of your organization in determining this? What methods of settlement have been used for "other disputes of a private law character" and what has been regarded as the applicable law?***

Austria

[Original: English]

The wording used in Austrian headquarters agreements (such as "any dispute" or "disputes arising out of contracts and disputes of a private law character") usually encompasses all kinds of disputes between private parties and an international organization, not limited to disputes arising from contracts. Special provisions exist for labour disputes, which must be dealt with by mechanisms that protect the rights of the employees in accordance with the European Convention on Human Rights pursuant to the organization's internal regulations. In addition, special provisions occasionally also exist for damages caused by motor vehicles.

Belgium

[Original: French]

Certain disputes between international organizations and private individuals, referred to as being "of a private law character", concern the operational activities of international organizations, or debt recovery proceedings. These disputes do not arise directly from contracts and some are brought before Belgian courts.

In a case concerning operations conducted in 2011 under the coordination of an international organization, the Brussels Court of Appeal ruled, on 30 November 2017, on an application for compensation from the relatives of victims who were killed during aerial bombardments. The Court of Appeal established that the international organization's immunity from jurisdiction should, in principle, be applied, but that the two types of disputes – contractual or employment-related disputes on the one hand, and quasi-delict claims for international liability relating to peacekeeping operations conducted by an international organization, on the other hand – also had differences in respect of immunity from jurisdiction. The Court of Appeal noted that recognition of the international organization's immunity from jurisdiction concerned

[1] https://www.gov.uk/government/publications/model-services-contract#full-publication-update-history.

*** Cross-references contained in the questions were omitted to avoid confusion. Question 10 made reference to question 8 of the questionnaire. For the full text of question 8, see chap. II, sect. B.8 above.

the procedure and the jurisdiction of the tribunal and in no way involved a judgment on the merits as to the organization's liability for civil losses.

Relying on the case law of the European Court of Human Rights in *Stichting Mothers of Srebrenica*, the Court decided that the appellants' right of access to a court was no justification for setting aside the international organization's immunity, given the context of that particular case and the following principles:

(a) The international organization involved was a military alliance committed to international peace and security, in line with the purposes and principles of the United Nations.

(b) The operations of the international organization, in particular those conducted under a Security Council resolution, were fundamental for the goal of maintaining international peace and security.

(c) Placing the missions of the international organization under the jurisdiction of national courts would allow States to use their courts to interfere in the organization's fulfilment of a fundamental mission in this area, including in the effective conduct of its operations. This is the type of interference that the international organization's immunity from jurisdiction is meant to legitimately prevent, to enable it to act in an independent manner.

That case is currently under appeal before the Court of Cassation.

More recently, on 8 June 2018, the Brussels Court of Appeal ruled in a case in which the respondents had filed suit against the State of Belgium and three Belgian officers in Belgian courts seeking compensation for moral damages for the loss of a relative and threats of murder against them during the massacre of Tutsi refugees at the Don Bosco Technical School in Kigali. They had been left unprotected at that school following the withdrawal of the Belgian contingent.

The Court of Appeal found that the Belgian contingent in Kigali, and more specifically the Belgian soldiers of the School, always acted under the mandate of the United Nations Assistance Mission for Rwanda (UNAMIR). The Court also noted that the decision to leave the School and to go to the Meridien Hotel during the repatriation of foreign nationals was a UNAMIR operation, expressly set out in the mandate of the United Nations. Accordingly, the Court ruled that the Belgian soldiers, for their actions under a United Nations mandate, acted as an organ of the United Nations: the international military operations in question had been set up by the Security Council in several resolutions and included the participation of Belgian military forces. On the question of immunity from jurisdiction of the three military officers, the Court found that the appellants could invoke their immunity from jurisdiction and ruled that it did not have jurisdiction to hear the complaints filed against them without any other explanation.

There are also disputes brought before Belgian courts during debt recovery proceedings involving international organizations and private individuals. These suits are filed following the decisions of other courts, generally arbitral tribunals, which Belgian courts must enforce, under the rule of *exequatur*.

Côte d'Ivoire

[Original: French]

This question is not directed at States.

Jordan

[Original: Arabic]

[See reply of Jordan to question 1.]

Kingdom of the Netherlands

[Original: English]

Not applicable.

Malaysia

[Original: English]

It is pertinent to first differentiate private law and public law. Idrus Harun JCA (as he then was) in the case of *Kelana Megah Development Sdn. Bhd. v. Kerajaan Negeri Johor & Another Appeal [2016] 8 CLJ 818-819* in delivering his judgment stated the following:

> Before proceeding further, we wish to deal briefly with the difference between public law and private law human rights. Public law, we apprehend, governs relationship between Government or public authorities and subjects, where the authority concerned has power in matters that affect the rights of subjects such as the matter before us that is land acquisition. Additionally, public law also governs relationships that are direct concerns to society such as criminal law. In short, public law powers cannot be exercised by any private individual or entity. *Private law on the other hand, deals with relationship between private individuals or entities [with] which State is not directly concerned*,[1] as in the relations between husband and wife, the law of contract and law of torts. Governments and public authorities too can be subjected to private law as in cases where the government contracts with a private individual or a cooperation to enter into a transaction. Private law is the counterpart to public law.

It is agreeable that other disputes of a private law character shall include disputes other than those arising from contracts. Nevertheless, it needs to be noted that the Government of Malaysia, so far, has not had prior experience in handling matters of private law in nature other than contracts with international organizations, since private law disputes will be brought by the individuals themselves.

Oman

[Original: Arabic]

It is not clear to the Sultanate of Oman at present that there are disputes related to a private law, and the categories excluded from these international agreements. As for the local laws that regulate these practices; they include as stated above: the Civil and Commercial Procedure Law and the Personal Status Law.

Switzerland

[Original: French]

N/A.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

The United Kingdom is not aware of a specific practice in terms of settlement of disputes of a private law character. The method of dispute settlement and applicable law will vary on a case by case basis.

[1] Emphasis added.

11. Question 11 – Have you developed a practice of agreeing ex post to third-party methods of dispute settlement (arbitration or adjudication) or waiving immunity in cases where disputes have already arisen and cannot be settled otherwise, e.g. because no treaty/contractual dispute settlement has been provided for?

Austria

[Original: English]

For disputes between Austria and international organizations emanating from a headquarters agreement, the settlement methods are clearly defined in the agreement itself. Agreeing on modes of dispute settlement *ex post* has therefore not been necessary. As stated above, up to now, all such disputes have usually been solved through negotiation.

In case of disputes between international organizations and private parties, Austria provides the necessary framework through its headquarters agreements, which leave sufficient leeway for the parties to choose their preferred way of settlement, but at the same time ensure that the rights of individuals are protected in line with Austria's constitutional and international obligations. The method of settlement or the *ex post* change thereof remains at the discretion of the parties. The headquarters agreements provide a fall back option in case the parties cannot agree on a preferred method.

However, in its judgment of 29 September 2022 the Austrian Constitutional Court declared parts of a headquarters agreement unconstitutional and therefore inapplicable in the specific case that gave rise to the procedure before it, thus opening the way for court litigation in this specific case only.

Belgium

[Original: French]

N/A.

Côte d'Ivoire

[Original: French]

This question is not directed at States.

Jordan

[Original: Arabic]

[…] The parties to a dispute are the ones who take the decision to authorize third party methods of dispute resolution or to waive immunity in cases where disputes have already arisen.

If a dispute arises and the parties have not reached an agreement in advance with regard to dispute resolution, they can choose to negotiate a resolution to the dispute themselves or seek the assistance of a mediator (third party). If those options fail to produce a result, the parties may resort to arbitration or the judiciary as a means of resolving the dispute.

In some cases, the agreement or contract may stipule dispute settlement mechanisms, such as arbitration or resort to the judiciary. If that is the case, the parties will be obliged to use these mechanisms [as] set out in the relevant agreement or contract.

As for waiving of immunity, this is a legal question that depends on the specific circumstances of the case and the parties involved. In general, however, States and international organizations may enjoy immunity from legal process in certain circumstances, but such immunity can be waived in some cases. Nonetheless, the decision to waive immunity is usually taken on a case-by-case basis and is subject to a variety of legal and political considerations.

As mentioned earlier, in some types of disputes, such as labour disputes, international organizations and bodies may not enjoy diplomatic immunity before the Jordanian courts.

Kingdom of the Netherlands

[Original: English]

The Kingdom of the Netherlands has not developed such a practice.

Oman

[Original: Arabic]

No incident has occurred regarding the aforementioned question to date, but in the event that it does occur, the Government of the Sultanate of Oman has the competence to deal with it in accordance with the provisions of international law, and local government committees are usually established so that disputes are studied and discussed extensively, in order to reach appropriate solution, either through arbitration or amicable settlement.

Switzerland

[Original: French]

N/A.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

The United Kingdom is not aware of a specific practice of agreeing *ex post* to third-party methods of dispute settlement but this may arise in specific circumstances and would be considered on a case-by-case basis.

III. Replies received from international organizations and entities

A. General replies

Islamic Development Bank

[Original: English]

[…] IsDB is a supra-national, intergovernmental, and self-regulated international development financial institution established in accordance with its Articles of Agreement in 1974, signed and ratified by its 57 sovereign member countries. By virtue of its legal status, IsDB is governed by public international law, and therefore, it is not a supervised entity; thus, not subject to any extraneous, *inter alia*, local regulator(s), regulation(s), law(s) and/or legal system(s). The Board of Governors, the Board of Executive Directors, and the President are the three main bodies/authorities that govern IsDB.

1. Disputes with member countries of IsDB or between member countries

As per the [Articles of Agreement] of IsDB:

Article 52 (Immunity from judicial proceedings)

1. The Bank shall enjoy immunity from every legal process except in cases arising out of or in connection with the exercise of its powers to raise money, or to buy and sell or underwrite the sale of securities in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2. Notwithstanding the provisions of paragraph l of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of the member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the By-Laws and Regulations of the Bank, or in contracts entered into with the Bank.

3. Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Article 63 (Languages, interpretation and application)

1. Any question of interpretation or application of the provisions of this Agreement arising between any member and the Bank or between two or more members of the Bank, shall be submitted to the Board of Executive Directors for decision. If there is no Executive Director of the nationality of the member country concerned, paragraph 3 of Article 33 shall be applicable.

2. Any member may require, within six (6) months of the date of the decision under paragraph 2 of this Article, that the question be referred to the Board of Governors, whose decision shall be final. Pending the decision of the Board of Governors, the Bank, may, so far as it deems it necessary, act on the basis of the decision of the Board of Executive Directors.

Article 64 (Arbitration)

If a disagreement should arise between the Bank and a country which has ceased to be a member, or between the Bank and any member, after adoption of a resolution to terminate the operations of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three (3) arbitrators. One of the arbitrators shall be appointed by the Bank, another by the country concerned, and the third, unless the parties otherwise agree, by the President of the International Court of Justice or such other authority as may have been prescribed by Rules and Regulations adopted by the Board of Governors. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties. The third arbitrator shall be empowered to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

2. Disputes related to projects financed by IsDB

Disputes related to projects financed by IsDB are generally highlighted in the applicable General Conditions to project financing agreements:

Governing law: These General Terms of Project Financing and any Framework Agreement shall be governed by and be construed in accordance with the principles of Shari'ah and public international law. For the avoidance of doubt, the source of public international law shall include:

(a) any relevant treaty obligations that are binding reciprocally on the parties to these agreements; (b) the provisions of any international conventions and treaties generally recognized as having codified or ripened into binding rules of customary law applicable to states and to international financial institutions, as appropriate; (c) international custom, as evidence of a practice accepted as law; and (d) general principles of law applicable to multilateral economic development activities.

Settlement of disputes

(a) Except as otherwise indicated in a Loan Agreement, any dispute or controversy between the Bank and the Recipient and any claim by any party against the other party arising under a Loan Agreement will be settled amicably.

(b) If no amicable settlement is reached within ninety (90) days from the date notification is given by one party of a request for submission of the dispute to an amicable settlement, the dispute may be submitted to arbitration, as provided hereunder, by either party.

(c) The arbitration shall be in accordance with the International Islamic Centre for Reconciliation and Arbitration (IICRA) rules and procedures. The parties to such arbitration shall be the Bank on the one side and the Recipient on the other side.

(d) The arbitral tribunal shall consist of three (3) arbitrators appointed as follows: one arbitrator shall be appointed by the Bank; a second arbitrator shall be appointed by the Recipient, and the third arbitrator (hereinafter sometimes called the 'Umpire') shall be appointed by the two arbitrators appointed by the parties. If, within thirty (30) days from the date of notification of the submission to arbitration, either side fails to appoint an arbitrator, such arbitrator shall be appointed by the Secretary-General of the PCA at the Hague (hereinafter referred to as the 'Appointing Authority'). If within sixty (60) days after the notice instituting the arbitration proceeding, the two arbitrators shall not have agreed upon an Umpire, any party may request the Appointing Authority to designate the Umpire. In case any arbitrator appointed in accordance with this section resigns, dies or becomes unable to act, as successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(e) The arbitral tribunal shall decide all questions relating to its competence and shall, subject to the provisions of this Section and except as the parties shall otherwise agree, determine its procedures. All decisions of the Arbitral Tribunal shall be by majority vote.

(f) The arbitral tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the arbitral tribunal shall determine where and when it shall sit.

(g) The arbitral tribunal shall afford to all parties a fair hearing and shall render its award in writing. An award signed by a majority of the arbitral tribunal shall constitute the award of the arbitral tribunal. A signed counterpart of the award shall be transmitted to each party.

(h) Any award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to the Loan Agreement. Each party shall abide by and comply with any award rendered by the arbitral tribunal in accordance with the provisions of this Section.

(i) Notwithstanding any provision of the IICRA arbitration rules to the contrary, the arbitral tribunal shall not be authorized to take or provide, and the Recipient shall not be authorized to seek from any judicial authority, any interim measures of protection or pre-award relief against the Bank.

(j) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the settlement of controversies between the parties to the Loan Agreement or of any claim by any party against any other party arising thereunder.

(k) Service of any notice or process in connection with any proceeding under this Section or in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 11.03. The parties to the Loan Agreement waive any and all other requirements for the service of any such notice or process.

(l) In any proceeding arising out of the Loan Agreement, the certificate of the Bank as to any amount due to the Bank under the Loan Agreement shall be prima facie evidence of such debt, absent manifest error.

(m) If, within thirty (30) days after counterparts of the award have been delivered to the parties, the award has not been complied with, any party may: (i) enter judgment upon, or institute a proceeding to enforce, the award in any court of competent jurisdiction against any other party; (ii) enforce such judgment by execution; or (iii) pursue any other appropriate remedy against such other party for the enforcement of the award and the provisions of the Loan Agreement. Notwithstanding the foregoing, this Section shall not authorize any entry of judgment or enforcement of the award against the member country except as such procedure may be available otherwise than by reason of the provisions of this Section.

3. Disputes related to private borrowing/resource mobilization/capital market transactions

Generally governed by English Law and Arbitration.

4. Disputes related to corporate contracts

Generally, the Shariah rules or local/national laws and arbitration methods are adopted either in member countries or other acceptable arbitration centres.

Having carefully reviewed the contents of the [questionnaire], […] the Islamic Development Bank has currently no cases [or] international disputes that may be brought to the attention of the subject forum. However, in case there is/are any cases/issues in the future requiring solutions through the above forum, IsDB will communicate the same to the United Nations legal forum for guidance/settlement thereof.

[…] Hereunder is information on the affiliate members of IsDB and how they are tackling legal matters when counterparties are reluctant or failed to comply with their contractual obligations:

For the other members of the IsDB group

A. Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC)

ICIEC has so far not encountered any of the disputes referred to under paragraphs 6 and 7 of the questionnaire.

Any dispute between the member countries and ICIEC is required to be, firstly, resolved amicably, and in case no amicable settlement could be achieved, the matter is required to be submitted to arbitration (article 59 of the Articles of Agreement). In this case, article 59 refers to ad hoc arbitration whereby one arbitrator is appointed by each ICIEC and member country while the third arbitrator is appointed by the Secretary General of the Organization of Islamic Cooperation.

In case of disputes between ICIEC and private parties, such disputes are governed by the arbitration in accordance with such rules as provided in the relevant contract (article 59(2)).

ICIEC also has a duty to expressly state the dispute settlement mechanism that shall be adopted in case of a dispute between ICIEC and its policyholders. Since ICIEC is subrogated to the rights of its policyholders in case of payment of a claim, ICIEC prefers arbitration to be the dispute settlement mechanism under relevant insured contracts between the policyholder and the obligor, be it sovereign or private.

Concerning a practice of agreeing *ex post* to third-party methods of dispute settlement (arbitration or adjudication) or waiving immunity in cases where disputes have already arisen and cannot be settled, it is to be noted that this has not been practiced, however, the ICIEC Articles of Agreement (article 56) allow the waiver of immunity in respect of its obligations under a commercial contract.

B. Islamic Corporation for the Development of the Private Sector (ICD)

Since its inception (2001), the main claims of ICD are related to recovery with respect to financing operations, judicially supervised insolvency or reorganization process, and claims relating to unsuccessful investments. Most of these disputes have been closed through negotiations that lead to settlements or restructuring of the defaulting facilities/investments. In a few cases, judicial attachment and enforcement of judicial awards against defaulting clients have also been used.

For the disputes between ICD and the external private enterprises, priority is given to conciliation and negotiation as these modes save time and costs and promote good relations between ICD and the other parties to the disputes. Arbitration and judicial enforcement are the last recourse. Judicial enforcement is used for cases of claims and recovery.

For improving the methods of dispute settlement, the following is recommended:

(i) For negotiation and conciliation for DFIs, it is key to have them incorporated within the contracts as priority modes of dispute resolution clearly defining the nature of disputes.

(ii) For judicial enforcement, DFIs can consider using cross-default policies (inter-group) to facilitate the recovery and settlement of disputes.

Concerning the question of whether ICD has a duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character, ICD is using the following methodology:

(i) For financing/investment agreements, ICD makes provision for amicable settlement or arbitration at the instance of both contracting parties, and with litigation at the sole discretion of ICD to the extent allowed by the applicable law.

(ii) In addition, ICD includes in the jurisdiction clause a provision making it clear that nothing in the agreement waives any of the privileges and immunities of

ICD accorded under the Articles of Agreement establishing ICD, international convention, or any applicable law.

ICD is amenable to an *ex post* agreement on third-party dispute resolution methods especially if such methods are led by statutory administrative bodies, are agreed upon by both parties, and are a convenient avenue for settling the disputes other than what is contractually agreed.

Concerning a practice of agreeing *ex post* to third-party methods of dispute settlement (arbitration or adjudication) or waiving immunity in cases where disputes have already arisen and cannot be settled, it is to be noted that ICD disputes have so far arisen out of contractual relationships. In some cases, general third-party actions (State and non-State actors) likely to affect the operations of the institution may arise which needs to be addressed such as the imposition of forex transfer restrictions in a member country. ICD has leveraged its status as a multilateral financial institution to get preferential treatment based on its Articles of Agreement in the above cases.

C. International Islamic Trade Finance Corporation (ITFC)

The types of disputes that ITFC has encountered are mostly repayment defaults and service performance delays (breaches of contract and negligence).

ITFC rarely resorts to litigation as article 49 of the ITFC Articles of Agreement states that all disputes shall be settled by arbitration and local courts have no jurisdiction on ITFC-related matters. Negotiation is a very important stage to settle any dispute before taking any formal legal action.

ITFC has a standard arbitration clause, which can be adjusted with regard to aspects such as the venue or seat of arbitration, etc. A standard arbitration clause is as follows:

> This Agreement is governed by the English law to the extent not inconsistent with the Shari'ah principles (as set out in the Sharia Standards published by the Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI) and as interpreted by the Islamic Fiqh Academy of the Organization of Islamic Cooperation) or IDB Sharia Committee).
>
> Any dispute, difference, or claim arising out of or connected with a Murabaha Finance Document (including a dispute regarding the existence, validity, interpretation, performance, breach, or termination of this Agreement or a dispute, difference, or claim relating to any non-contractual obligations arising out of or in connection with this Agreement, a ("dispute") shall be referred to and finally resolved by arbitration under the Arbitration Rules of International Islamic Centre for Reconciliation and Arbitration ("IICRA") (the "Rules"), which rules are incorporated by reference into this clause (dispute resolution). In relation to any such arbitration:
>
> (a) the arbitral tribunal shall consist of three arbitrators;
>
> (b) the claimant and the respondent shall each nominate one arbitrator within fifteen (15) days from receipt by the Registrar of the IICRA of the response to the request for arbitration as defined in the Rules, and the chairman of the arbitral tribunal shall be nominated by the two party nominated arbitrators within fifteen (15) days of the last of their appointments. If he is not so nominated, he shall be chosen by the; International Islamic Centre for Reconciliation and Arbitration ("IICRA")[sic]
>
> (c) the seat of the arbitration shall be Dubai, United Arab Emirates;
>
> (d) the language of the arbitration shall be English;

ITFC agrees on dispute settlement in the contract (arbitration) and the corporation has not experienced a situation where it had to waive immunity to proceed in a legal claim.

International Tribunal for the Law of the Sea

[Original: English]

[…] ITLOS is an international judicial body established by the 1982 United Nations Convention on the Law of the Sea.[1] The Tribunal has jurisdiction to adjudicate disputes concerning the interpretation or application of the Convention and all matters specifically provided for in any other agreement conferring jurisdiction on the Tribunal.

The Tribunal has its seat in Hamburg, Germany. Its privileges and immunities are set forth in the 1997 Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea[2] (hereinafter "the General Agreement") and the 2004 Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany regarding the Headquarters of the Tribunal (hereinafter "the Headquarters Agreement"). According to the preambles of both agreements, the Tribunal enjoys such legal capacity, privileges and immunities as are necessary for the exercise of its functions. Both agreements are available on the Tribunal's website (www.itlos.org).

Disputes involving States or other intergovernmental organizations

It may be noted that both the General Agreement and the Headquarters Agreement contain provisions dealing with the settlement of disputes between the Tribunal and States Parties to the General Agreement and between the Tribunal and the Government of Germany as the Tribunal's host State, respectively.

In that respect, article 26, paragraph 2, of the General Agreement provides:

> All disputes arising out of the interpretation or application of this Agreement shall be referred to an arbitral tribunal unless the parties have agreed to another mode of settlement. If a dispute arises between the Tribunal and a State Party which is not settled by consultation, negotiation or other agreed mode of settlement within three months following a request by one of the parties to the dispute, it shall at the request of either party be referred for final decision to a panel of three arbitrators: one to be chosen by the Tribunal, one to be chosen by the State Party and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators.

Article 33, paragraph 2, of the Headquarters Agreement provides:

> Any dispute between the Tribunal and the Government arising out of or concerning the interpretation or application of this Agreement or of any supplementary agreement, or any question affecting the Headquarters district or the relationship between the Tribunal and the Government which is not settled by consultation, negotiation or other agreed mode of settlement, shall be referred, at the request of either party to the dispute, for a final and binding decision to a panel of three arbitrators, one to be chosen by the Tribunal, one to be chosen by the Government, and the third, who shall be the Chairman of the panel, to be chosen by the first two arbitrators.

[1] United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982), United Nations, *Treaty Series*, vol. 1833, No. 31363, p. 3.]

[2] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea (New York, 23 May 1997), *ibid*., vol. 2167, No. 37925, p. 271.]

To date, neither of these dispute settlement clauses has been resorted to.

Contractual disputes

Pursuant to article 5, paragraph 1, of the General Agreement and article 8, paragraph 1, of the Headquarters Agreement, the Tribunal enjoys immunity from legal process. Under article 26, paragraph 1 (*a*), of the General Agreement and article 33, paragraph 1 (*a*), of the Headquarters Agreement, the Tribunal shall make suitable provisions for the settlement of "disputes arising out of contracts and other disputes of a private law character to which the Tribunal is a party".

In this regard, it may be noted that it is the practice of the Tribunal to conclude contracts for the procurement of products or services on the basis of its "General conditions for contracts". These conditions include the following provision on the settlement of disputes:

16. SETTLEMENT OF DISPUTES:

16.1 Amicable Settlement:

The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedures as may be agreed between the Parties.

16.2 Arbitration

Any dispute, controversy or claim between the Parties arising out of this Contract or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article, within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining.

The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in this Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only.

The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

16.3 Place of conciliation and arbitration

The place of conciliation and arbitration shall be Hamburg.

To date, in the Tribunal's practice, these provisions have not been resorted to since no contractual disputes have arisen.

Labour disputes

The Staff Regulations and Rules of the Tribunal provide a system for addressing a complaint lodged by a staff member against an administrative decision alleging non-observance of that staff member's contract or that staff member's terms of employment or against any disciplinary action taken against that staff member. These Staff Regulations and Rules are available on the Tribunal's website.

Under this system, the staff member must first seek an administrative review of the administrative decision or disciplinary action. If not satisfied with the outcome of the review, the staff member may file a complaint before the Tribunal's Conciliation Committee, which shall endeavour to settle the matter by way of conciliation. If conciliation fails, the staff member can submit an application to the Tribunal's Joint Appeals Board (hereinafter the "JAB") (see Staff Regulation 11.2 and Annex VI to the Staff Regulations). The JAB will adopt a report with its decision.

The decision of the JAB can be appealed by the staff member and/or the Registrar of the Tribunal before the United Nations Appeals Tribunal (hereinafter the "UNAT"). An agreement extending the competence of UNAT for this purpose has been concluded between the Tribunal and the United Nations in 2010 and has been amended in 2021.

A number of judgments have been issued by UNAT to date in disputes submitted by staff members of the Tribunal. The judgments are available on the website of UNAT.

Permanent Court of Arbitration

[Original: English]

PCA is an intergovernmental organization established to facilitate arbitration and other modes of resolution of disputes between States, State entities, international organizations, and private parties. It was established in 1899 during the first Hague Peace Conference, which makes it the oldest universal intergovernmental institution dedicated to the resolution of international disputes.

As of 25 April 2023, the PCA International Bureau has provided registry support to 615 dispute settlement proceedings involving, directly or indirectly, over 146 different States. It has also provided registry support for 54 dispute settlement proceedings involving 27 different international organizations; and acted as Appointing Authority in 34 disputes involving 28 different international organizations. Proceedings administered by PCA range from inter-State matters under bilateral treaties and multilateral conventions, to investor-State disputes under investment treaties and trade agreements, to cases under contracts or other agreements involving States, State entities, international organizations, and other public and private entities. PCA is also mandated to perform certain roles under the Arbitration Rules of UNCITRAL among a variety of other national and international dispute resolution instruments. The PCA website lists the PCA own rules[1] and conventions,[2] as well as examples of other dispute resolution rules and treaties and instruments of various kinds[3] that refer to PCA.

[…]

PCA addresses the questionnaire as both an international organization that itself may enter into disputes with other parties and as an institution that administers disputes involving international organizations.

United Nations Office of Legal Affairs

[Original: English]

The United Nations Office of Legal Affairs notes that the questionnaire has also been sent to the Funds and Programmes of the United Nations. The answers [provided

[1] https://pca-cpa.org/en/resources/other-conventions-and-rules/.
[2] *Idem*.
[3] https://pca-cpa.org/en/resources/instruments-referring-to-the-pca/.

by the United Nations Office of Legal Affairs] focus on disputes involving the United Nations Secretariat that are handled by the Office of Legal Affairs. They also take into account disputes involving the Funds and Programmes to the extent that they are referred to the United Nations Office of Legal Affairs.[1]

B. Specific replies to the questions in the questionnaire

1. Question 1 – What types of disputes/issues have you encountered?[****]

Asian International Arbitration Centre

[Original: English]

Paragraphs 6 and 7 [of the questionnaire] focus primarily on disputes arising under international law from three perspectives: (*a*) disputes between international organizations; (*b*) disputes between international organizations and States; and (*c*) disputes between international organizations and private parties, including individuals and legal persons, such as corporations or associations.

For the avoidance of doubt, there are no past nor existing case against AIAC under international law which involves disputes under categories (*a*), (*b*) and (*c*).

There are also no known contractual disputes involving international law, between AIAC and their service providers, other procurement-related disputes, or labour disputes between AIAC and their employees. The same applies to disputes involving victims of harmful activities attributable to AIAC as there is none who have brought disputes whilst maintaining a contractual relationship with AIAC.

Common Fund for Commodities

[Original: English]

CFC in the last 10 years has not formally settled any disputes with any parties, CFC prefers negotiation (as litigating is expensive and the mostly private counterparties of CFC often have no meaningful assets, and it makes no economic sense to incur costs for litigation if the chance of recovery is low).

Eurasian Group on Combating Money Laundering and Financing of Terrorism

[Original: English]

EAG and its Secretariat have not been involved in any dispute settlement from its foundation time.

Food and Agriculture Organization of the United Nations

[Original: English]

– Disputes with private parties, including both individuals and legal persons. These arose from contractual disputes with service providers and other procurement-related disputes, and from labour disputes with staff members and with non-staff personnel.

---

[1] The Office of Legal Affairs was established by the General Assembly in its resolution 13 (I) of 13 February 1946 as the central legal service for the Secretary-General and the Secretariat and United Nations organs. Disputes involving the Funds and Programmes are handled by the Office of Legal Affairs to the extent that such cases are referred to it accordingly.

[****] Cross-references contained in the questions themselves were omitted to avoid confusion. Question 1 made reference to paragraphs 6 and 7 of the questionnaire. For the text of paragraphs 6 and 7 and 9 of the questionnaire, see footnote 8 above.

– Disputes involving victims of harm attributable to FAO who are in no contractual relationship with FAO, such as motor vehicle accidents involving pedestrians, technical assistance activities impacting on land use rights, processing of data.

Organization of African, Caribbean and Pacific States

[Original: English]

Most of the disputes OACPS has encountered are related to staff matters.

Other disputes relate to matters arising from projects between OACPS and the European Union. There have also been political disputes between OACPS member States.

Organisation for the Prohibition of Chemical Weapons

[Original: English]

OPCW has encountered the following types of issues:

(i) Issues with States:

Interpretation and application of the Headquarters Agreement between the Kingdom of the Netherlands and OPCW (the "Headquarters Agreement").

(ii) Issues with other international organizations:

Differences concerning the implementation of operational activities on the basis of certain service agreements.

(iii) Disputes with private parties:

Disputes arising from commercial contracts.

Permanent Court of Arbitration

[Original: English]

PCA has administered all three types of disputes identified in the Commission's questionnaire, namely: (*a*) disputes between international organizations and private parties; (*b*) disputes between international organizations and States; and (*c*) disputes between international organizations. In line with the observations in paragraph 7 of the questionnaire, disputes in group (*a*) are the most common. As of 25 April 2023, PCA has acted as registry for 49 claims brought by private parties against international organizations. PCA has administered two disputes falling within category (*b*), i.e., between States and international organizations, and three disputes falling within category (*c*), i.e., between international organizations. As of 25 April 2023, PCA has administered a total of 54 disputes involving international organizations across a variety of methods of dispute settlement, and acted as appointing authority in 34 disputes over the same period (and 21 in the last 10 years). Publicly available examples of PCA-administered cases involving international organizations are listed in annex A.[1]

As an international organization itself, PCA has encountered disputes in group (*a*), i.e., disputes between international organizations and private parties.

[1] Annex A, as submitted by PCA, is available on the website of the Commission at https://legal.un.org/ilc/guide/10_3.shtml#govcoms.

United Nations Conference on Trade and Development

[Original: English]

Disputes between UNCTAD and private parties and disputes with other international organizations.

United Nations Development Programme

[Original: English]

UNDP has encountered disputes with staff and United Nations Volunteers regarding contentious employment grievances including disciplinary (misconduct) matters.

Regarding contractors and personnel (non-staff), UNDP has encountered disputes related to poor performance by contractors and consultants that may lead to termination of the contract as well as claims in relation to payments.

United Nations Framework Convention on Climate Change

[Original: English]

UNFCCC has been fortunate not to have many disputes that have escalated to the level of a dispute requiring formal adjudication. UNFCC has had differences with its service providers, with whom UNFCCC has commercial contracts. UNFCCC has also had a few instances when private individuals have sought damages from it for having inadvertently violated their intellectual property rights.

United Nations Office for Project Services

[Original: English]

UNOPS has encountered the following two main types of disputes:

(*a*) Personnel disputes between UNOPS and individuals (both personnel retained under United Nations staff contracts and other contract modalities such as Individual Contractor Agreements). Personnel disputes are disputes over administrative decisions made by UNOPS management that impact UNOPS personnel (e.g., regarding non-selection, non-renewal of contract, benefits and entitlements, termination, dismissal and other disciplinary measures, etc).

(*b*) Commercial disputes between UNOPS and private parties (i.e., companies and non-governmental organizations), governmental entities or other United Nations entities arising out of a commercial transaction. The vast majority of commercial disputes involve private parties contracted by UNOPS to procure goods and/or services, including works, as part of UNOPS projects. In most of these cases, private parties have brought claims against UNOPS, but there are also cases in which UNOPS has a claim against private parties. Commercial disputes with other United Nations entities are very rare in practice and have always been settled amicably.

United Nations Office of Legal Affairs

[Original: English]

Disputes between international organizations:

International organizations routinely cooperate with one another, often based on appropriate contractual or administrative arrangements, including memorandums of understanding. Issues that arise in the implementation of such arrangements are dealt with amicably and through mutual consultations. The Office of Legal Affairs is not

aware of formal dispute settlement proceedings initiated between the United Nations and other international organizations resulting from a divergence of views or interests in connection with such cooperation.

Disputes between the United Nations and States:

The great majority of the disputes of a public international law character that the United Nations has encountered concern the interpretation or application of bilateral agreements to which the Organization is party. Many of these arise out of the status-of-forces (SOFA) and status-of-mission agreements (SOMA) for the Organization's peace operations and concern the failure of host countries to accord the privileges and immunities, facilities and exemptions for which those agreements provide and that are to be enjoyed by the peace operation concerned. Similarly, disputes arise with respect to the application of privileges and immunities and related facilities under host country agreements for the establishment of United Nations offices or for the hosting of conferences and events convened by the United Nations away from Headquarters.

Disputes between the United Nations and private parties:

The United Nations has encountered the two types of disputes referred to in section 29 (*a*) of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946 (General Convention), pursuant to which the Organization is to make provisions for appropriate modes of settlement of (*i*) disputes arising out of contracts or (*ii*) other disputes of a private law character to which the United Nations is a party.

In practice, the first type typically arises out of contracts with private parties. These comprise, for the most part, contracts with commercial vendors, but also with individuals of the following categories of non-staff personnel: consultants or individual contractors engaged for the provision of specific services for projects of limited duration,[1] and United Nations Volunteers.[2]

The second type of dispute may arise from tort or delict claims of a private law character by third parties for personal injury, illness or death, and for property loss or damage (including non-consensual use of premises), resulting from or attributable to the activities of members of peace operations in the performance of their official duties.[3] They also arise out of similar third party claims for injury, illness, death, loss or damage sustained at United Nations Headquarters.[4] In addition, claims of intellectual property infringement have occasionally been brought against the United Nations arising from the Organization's use of third-party owned materials without appropriate licences.

[1] See administrative instruction: Consultants and individual contractors, ST/AI/2013/4, 19 December 2013, sections 1 and 2.

[2] Other categories of non-staff personnel, whose contracts do not provide for arbitration with the United Nations, do not fall within the scope of the answers to this questionnaire: see Report of the Secretary-General on the administration of justice at the United Nations (A/72/204), annex II, section A.

[3] See Report of the Secretary-General on administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations (A/51/903, paras. 13–14. See also General Assembly resolution 52/247 of 26 June 1998.

[4] General Assembly resolution 41/210 of 11 December 1986.

World Food Programme[1]

[Original: English]

For purposes of the questionnaire, the following definition of "dispute" has been used by WFP: "an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other".[2]

The types of disputes that WFP has encountered include the following:

(*a*) *Disputes with international organizations*,[3] including organizations, programmes and funds of the United Nations System and multilateral development banks. These disputes are very rare and normally concern the interpretation and application of agreements concluded between WFP and international organizations (more details are provided in [reply of WFP to] question 2).

(*b*) *Disputes with States ("States")*.[4] These disputes are infrequent and mainly involve differences on:

(*i*) the interpretation and application of WFP privileges and immunities under international treaties and agreements to which a State is a party, for example, on the scope or modality of application of tax exemption granted by the State to WFP;

(*ii*) on the interpretation, application and breach of agreements between WFP and States. For example, WFP and a State may have a different interpretation of the provisions concerning modalities for implementation of, or use of that State's contribution for, WFP activities.

(*c*) *Disputes with private parties*, including disputes with individuals or entities having a current or past contractual relationship with WFP ("contractual disputes") or disputes with individuals or entities having no contractual relationship with WFP ("disputes with third parties"). With respect to contractual disputes, WFP has encountered disputes with:

(*i*) Entities collaborating with WFP on the implementation of projects and activities ("cooperating partners"), such as, for example, non-governmental organizations. These disputes mainly concern the interpretation, application and breach of agreements between WFP and cooperating partners or the application of WFP regulations, rules and policies, such as, for example, the WFP Anti-fraud and anti-corruption policy and related guidance;

(*ii*) Entities contracted by WFP for its operational needs ("contractors") such as, for example, goods and/or services providers, food suppliers, carriers (ocean, air and land carriers), ports/logistics hub managers, insurers and financial institutions. WFP may also encounter real estate disputes with landlords and owners of different types of properties, like warehouses, offices, terminals,

---

[1] The answers to this questionnaire are based on WFP policies, regulations and rules currently in effect and most recent contractual practice. Specific information concerning disputes in which WFP has been involved are based on the information available to WFP Legal Office and may not reflect disputes that are not, or are not yet, subject of a formal dispute settlement method.

[2] Jeffrey Lehman and Shirelle Phelps, *West's Encyclopedia of American Law, 2nd ed. (Detroit,* Thomson/Gale, 2005).

[3] For the purpose of [the] questionnaire, the term "international organization" means "an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality" (2011 articles on the responsibility of international organizations [*Yearbook …2011*, vol. II (Part Two), paras. 87–88; see also General Assembly resolution 66/100 of 9 December 2011, annex], art. 2 (*a*)).

[4] For the purpose of [the] questionnaire, the term "State" includes any State authority, including Government authorities at any level.

logistics facilities. These disputes mainly concern the interpretation, execution and/or breach of the contractual terms (e.g. the performance of the contractual obligations) and WFP policies applicable to them including, for example, WFP's decision to impose sanctions on vendors;

(*iii*) Individuals employed by WFP as staff ("staff") or as affiliate workforce (such as consultants, service contract holders, special service agreements holders, or casual labourers) ("affiliate workforce") on employment related issues.

(*d*) *Third parties that do not have a contractual relationship with WFP*. Such disputes may concern alleged torts (e.g. car accidents, fatal incidents), or other third party rights (e.g. image rights). Disputes with third parties are addressed in [reply of WFP to] question 10.

World Health Organization

[Original: English]

WHO has encountered disputes with private parties, including goods suppliers and service providers (both juridical and natural persons such as individual contractors); active or former staff members; and persons with no contractual relationship with WHO (either juridical or natural), for instance in the context of tort claims resulting from traffic accidents involving WHO or other harmful occurrences, or in the context of disputes of a constitutional nature related to the exercise of the WHO mandate, operations and activities.

WHO has *not* encountered disputes with other international organizations or States (either member or non-member States).

While it is not a case of a dispute between WHO and a member State, WHO would nonetheless refer to the Advisory Opinion of 20 December 1980 rendered by the International Court of Justice on the *Interpretation of the Agreement of 25 March 1951 between WHO and Egypt* (advisory opinion attached as annex 1).[1] Having considered a possible transfer from Alexandria of the WHO Regional Office for the Eastern Mediterranean Region and taking note of the differing views having been expressed among member States on the applicability of a provision of the Agreement of 25 March 1951 between WHO and Egypt, the World Health Assembly in May 1980 submitted a request to the Court for an advisory opinion on questions related to the interpretation of the said Agreement, in accordance with Article 96, paragraph 2,[2] of the Charter of the United Nations, article 76 of the Constitution of WHO[3] and article X, paragraph 2, of the Agreement between the United Nations and WHO.[4] Rather than a dispute between WHO and a member State, this case illustrates how a disagreement among member States concerning the conduct of WHO's operations was resolved.

[1] [*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I. C.J. Reports 1980*, p. 73.] Annex 1, as submitted by WHO, is available on the website of the Commission at https://legal.un.org/ilc/guide/10_3.shtml#govcoms.

[2] "Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities."

[3] "Upon authorization by the General Assembly of the United Nations or upon authorization in accordance with any agreement between the Organization and the United Nations, the Organization may request the International Court of Justice for an advisory opinion on any legal question arising within the competence of the Organization."

[4] "The General Assembly authorizes the World Health Organization to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its competence other than questions concerning the mutual relationships of the Organization and the United Nations or other specialized agencies."

World Intellectual Property Organization

[Original: English]

To date, WIPO has not encountered any types of disputes/issues with other international organizations or States. With respect to private parties, the only type of disputes/issues encountered by WIPO concerns labour disputes with its staff members (WIPO has never faced contractual disputes with service providers or other procurement related disputes).

World Trade Organization

[Original: English]

The WTO has been involved in disputes/issues with: (i) other international organizations; and (ii) private parties, including individuals and legal persons.

2. Question 2 – What methods of dispute settlement have been resorted to in cases of disputes with other international organizations, States or private parties? Please provide any relevant case law, or a representative sample thereof. If you cannot provide such information for confidentiality reasons, could you provide any such decisions or awards in redacted form, or a generic description/digest of such decisions?[†]

Asian International Arbitration Centre

[Original: English]

Within the international law scope and for the purposes of [the] questionnaire, as mentioned in [reply of AIAC to question] 1, AIAC has not encountered any disputes with parties under categories (*a*), (*b*), and (*c*). AIAC has, however, encountered disputes with private parties i.e. corporations, under Malaysian domestic law in the course of its work/business of provision of dispute resolution services.

AIAC faced a labour dispute, and the Malaysian Court of Appeal later declared AIAC to be immune from suit and legal process. This was in the case of *Regional Centre for Arbitration v. Ooi Beng Choo & Anor Civil Appeal,* No. W-01–160 of 1998 (Court of Appeal decision dated 2 August 1999) entailing a reference to the Industrial Court of a complaint of a dismissal under the Industrial Relations Act 1967.

A more recent case against AIAC is the Malaysian High Court case of *One Amerin Residence Sdn Bhd v. Asian International Arbitration Centre & Ors* [2019] MLJU 540 where the dispute involved a judicial review application of AIAC administration of cases under the Construction Industry Payment and Adjudication Act 2012. AIAC has also encountered several other cases of this nature which are not reported in Malaysian case law reports.

Nonetheless all these cases invoked the immunity of AIAC, which is embodied in the national legislations; the Diplomatic Privileges (Vienna Convention) Act 1996 (Act 636), International Organizations (Privileges and Immunities) (Act 1992), and the Kuala Lumpur Regional Centre for Arbitration (Privileges and Immunities) Regulations 1996 (P.U. (A) 120/1196).

[†] Cross-references contained in the questions themselves were omitted to avoid confusion. Question 2 made reference to paragraph 9 of the questionnaire. For the text of paragraph 9 of the questionnaire, see footnote * above.

Common Fund for Commodities

[Original: English]

Nothing to report.

Eurasian Group on Combating Money Laundering and Financing of Terrorism

[Original: English]

EAG and its Secretariat have not been involved in any dispute settlement from its foundation time.

Food and Agriculture Organization of the United Nations

[Original: English]

For *contractual disputes with service providers and other procurement-related disputes*: negotiations, negotiated settlements and (rarely) conciliation and arbitration. As an example, below is an instance in which all these methods were used:

– A service provider delivering goods to FAO incurred additional costs (demurrages and storage charges) due to a border closure and various related events. The service provider claimed these additional costs (plus commercial interest) from FAO.

– The parties entered into negotiations and subsequently engaged in a conciliation procedure that was unsuccessful in resolving the dispute.

– The service provider requested arbitration. In its final award, the arbitral panel dismissed the service provider's claim, concluded that FAO had fully discharged its contractual obligations, and ordered the parties to split the arbitral costs. However, the arbitral panel declined to rule on the question of which party was responsible for the additional costs that were incurred.

– The service provider requested a second arbitration. FAO sought to settle the dispute amicably through a settlement offer, which the service provider rejected.

– In its final award, the second arbitral panel dismissed the service provider's claim on the grounds that it was time-barred and ordered the service provider to bear the arbitral costs. Both parties were also ordered to bear their own legal costs.

For *labour disputes*: the internal appeals procedure, the International Labour Organization Administrative Tribunal (ILOAT), negotiated settlements, and informal dispute resolution using Ombuds services.

– The internal appeals procedure for staff members and consultants is two-tier, involving an administrative review and subsequently an appeal to the FAO/WFP Appeals Committee, following which the Director-General takes a final decision. Complaints may be lodged with ILOAT – see the ILOAT case law database.[1] In respect of non-observance of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF), the United Nations Appeals Tribunal (UNAT) has jurisdiction.

– For non-staff personnel, the dispute resolution clause in their contracts and in the applicable rules of FAO provides for resolution by mutual agreement or through arbitration in accordance with the UNCITRAL rules.

[1] https://www.ilo.org/tribunal/lang--en/index.htm.

In view of its status and the privileges and immunities it enjoys under public international law, FAO does not resort to national processes as a method of dispute settlement. In cases where private parties raise claims against FAO before national courts, FAO seeks, through the appropriate diplomatic and official channels, the assistance of the concerned Government in defending it and asserting its immunity from jurisdiction and every form of legal process.

Organization of African, Caribbean and Pacific States

[Original: English]

Article 33 of the Georgetown Agreement, which governs OACPS, states that "[m]ember States shall endeavour peacefully to resolve all disputes concerning the interpretation or application of this Agreement and other instruments set up under OACPS in a timely manner, through dialogue, consultation, and negotiation in keeping with Article 33 (1) of the Charter of the United Nations".

Following this, there is always an attempt to resolve each dispute by alternative dispute mechanisms. If this fails, disputes concerning staff matters often end up in ILOAT for resolution. Disputes [of] OACPS and external project management units end up in the Belgian courts if they cannot be resolved with alternative dispute resolution methods. Political disputes between member States are resolved by alternative dispute resolution mechanisms. If this is not successful, the case is referred to the International Court of Justice.

Organisation for the Prohibition of Chemical Weapons

[Original: English]

Interpretation and application of the Headquarters Agreement

Disputes concerning the interpretation and application of the Headquarters Agreement with its Host Country have been resolved amicably in accordance with article 26 (2) of the Headquarters Agreement.

In addition to the Headquarters Agreement, the Conference of the States Parties has established the Host Country Committee (HCC).[1] HCC meets periodically[2] to address any issues pertaining to the privileges and immunities conferred in the context of the Headquarters Agreement.

Operational concerns with regard to the implementation of service level agreements

In carrying out its operational activities, OPCW has concluded agreements with other United Nations common system organizations. Issues concerning the implementation of these agreements have been resolved by negotiations.

Disputes arising from commercial contracts

Disputes arising from commercial contracts have been resolved through negotiations.

[1] See decision C-11/DEC.9.

[2] HCC may also meet whenever it is convoked by the Chairperson of the Executive Council at the request of any member State or the Director-General. See C-11/DEC.9, para. 3.

Permanent Court of Arbitration

[Original: English]

To date, PCA has administered arbitrations, review panels, and a conciliation involving international organizations. The vast majority of disputes involving international organizations that PCA has administered (51 cases) are arbitrations. These arbitrations have predominantly been conducted under the PCA Optional Rules for Arbitration between International Organizations and Private Parties or different versions of the Arbitration Rules of UNCITRAL (the "UNCITRAL Arbitration Rules"). The arbitrations have arisen in a variety of sectors, with the five most common sectors being: (*i*) administrative and support services; (*ii*) employment; (*iii*) transportation and storage; (*iv*) finance and insurance; and (*v*) public international law. PCA has administered one conciliation between a private party and an international organization. The details of this proceeding are confidential. PCA has acted as registry to two review panels involving States on the one hand and an international organization on the other, both arising under the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean.[1] While some PCA proceedings are confidential, others are public and result in arbitral awards and other materials published on the PCA website. […] Publicly available examples of PCA-administered cases involving international organizations are listed in annex A.[2]

PCA itself, in its capacity as an international organization, enters into binding agreements that contain dispute resolution clauses with (*a*) its contracting parties; (*b*) its staff members; and (*c*) other parties.

Contracting parties: In addition to its Headquarters Agreement with the Kingdom of the Netherlands, in order to make its dispute resolution services more widely accessible, PCA has signed 19 treaty-level host country agreements with its contracting parties.[3] Host country agreements establish a legal framework of privileges and immunities under which future PCA-administered proceedings can be conducted in the territory of the host country and secure the provision by the host country of the facilities and services required for PCA-administered proceedings (such as office and meeting space and secretarial services). The dispute settlement clauses in agreements between PCA and its contracting parties refer to informal methods of dispute resolution such as negotiations, failing which reference is made to arbitration. A vast majority of the agreements refer to arbitration under the PCA Optional Rules for Arbitration Involving International Organizations and States (with the particular functions of PCA as appointing authority and secretariat excluded).

Staff members: Disputes between PCA and its staff members regarding administrative decisions pursuant to employment contracts are first referred to a three-member appeals board (the "Appeals Board") comprising a PCA staff member, an official of an intergovernmental organization located in The Hague, and a Chair who serves or has served as a judge or arbitrator at an international tribunal or court located in The Hague. Final decisions are made by the PCA Secretary-General after receiving the opinions and recommendations of the Appeals Board, which are advisory in character. As of 1 July 2016, in the event that the PCA Secretary-General's

[1] Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Auckland, 14 November 2009), *Official Journal of the European Union*, L 067, 6 March 2012, p. 3.]

[2] Annex A, as submitted by the PCA, is available on the website of the Commission at https://legal.un.org/ilc/guide/10_3.shtml#govcoms.

[3] These Contracting Parties include Argentina, Austria, Brazil, Chile, China, Costa Rica, Djibouti, Ecuador, India, Ireland, Lebanon, Malaysia, Mauritius, Paraguay, Portugal, Singapore, South Africa, Uruguay and Viet Nam.

final decision on the Appeals Board report fails to resolve the dispute, the appellant may refer the dispute to a sole arbitrator under the UNCITRAL Arbitration Rules. The arbitrator shall apply the terms of the contract of employment, the PCA staff rules and directives, and any relevant jurisprudence of ILOAT. The arbitration shall be seated in The Hague. The costs of the proceedings are borne by PCA, with the arbitrator charging an hourly rate for their services, capped at EUR 5,000 per arbitration. The arbitration is to be completed within 90 days from the appointment of the arbitrator. Prior to 1 July 2016, following the Secretary-General's final decision, ILOAT was to hear applications submitted by staff members alleging non-observance of their terms of employment. The Staff Rules were amended on 1 July 2016 to refer to arbitration rather than ILOAT to improve the efficiency of the dispute resolution procedure in terms of costs and time and to tailor the procedure to the specific circumstances of PCA.

Other parties: The contracts that PCA has entered into with consultants (to whom the Staff Rules do not apply) have predominantly contained dispute resolution clauses referring to arbitration before a sole arbitrator, governed by the UNCITRAL Arbitration Rules. The place of arbitration is usually The Hague and the law applicable to the dispute is most often that of the State of New York. The fees of the arbitrator are commonly capped at EUR 5,000. The PCA agreements with other service providers (including but not limited to court reporters, interpreters, technical service providers) also generally contain a reference to arbitration, governed by the UNCITRAL Arbitration Rules, but PCA has on occasion accepted different terms proposed by the counterparty.[4]

United Nations Conference on Trade and Development

[Original: English]

The vast majority of disputes are resolved through negotiation and amicable settlement. In the case of disputes with private parties, occasionally, UNCTAD may resort to arbitration.

United Nations Development Programme

[Original: English]

Staff-related disputes are managed through the United Nations tribunals.

When it comes to contractors and non-staff personnel, UNDP tries to implement (to the extent possible) a mutually agreed termination of the contract – in most cases UNDP is successful. The objective is to avoid arbitration as much as possible.

Over the last 15 years, UNDP has been involved in only four arbitrations, all of which involved vendors. In two cases, UNDP was successful before the arbitral tribunal. In one case, the government of the programme country of the project (under which the contract was entered into) took over the defence of the arbitration further to article X of the Standard Basic Assistance Agreement (i.e., an indemnification provision) and prevailed in the arbitration brought by the contractor. In that case, UNDP obtained a full indemnity letter signed by the vice-president of the programme country. The last of the four cases is currently under arbitration and UNDP Office of Legal Services has been liaising with the United Nations Office of Legal Affairs and has also engaged external counsel for representation. The government of the programme country is a named co-respondent.

[4] The arbitration clauses to be inserted into both of these kinds of contracts are currently in the process of being revised.

This is the [Standard Basic Assistance Agreement] indemnification provision:

> Assistance under this Agreement being provided for the benefit of the Government and people of ….., the Government shall bear all risks of operations arising under this Agreement. It shall be responsible for dealing with claims which may be brought by third parties against the UNDP or an Executing Agency, their officials or other persons performing services on their behalf and shall hold them harmless in respect of claims or liabilities arising from operations under this Agreement. The foregoing provision shall not apply where the Parties and the Executing Agency have agreed that a claim or liability arises from the gross negligence or wilful misconduct of the above-mentioned individuals.

United Nations Framework Convention on Climate Change

[Original: English]

With commercial contractors and individuals, UNFCCC has resorted to setting its differences amicably, through negotiations.

United Nations Office for Project Services

[Original: English]

UNOPS is an integral part of the United Nations and therefore enjoys immunity from legal process under article II, section 29, of the Convention on the Privileges and Immunities of the United Nations. Therefore, disputes involving UNOPS are not usually resolved through State court proceedings.

Personnel disputes between UNOPS and personnel retained under United Nations staff contracts are resolved through the United Nations' internal justice system. This includes formal dispute resolution processes before the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT) as well as informal dispute resolution processes such as negotiation and mediation through the Office of the United Nations Ombudsman […][1]

Personnel disputes between UNOPS and personnel retained under Individual Contractor Agreements are resolved through *ad hoc* arbitration under the UNCITRAL Arbitration Rules or mediation through the Office of the Ombudsman for United Nations Funds and Programmes, as the General Assembly has not provided individual contractors with access to the United Nations' internal justice system. Arbitrations between UNOPS and personnel retained under Individual Contractor Agreements are usually confidential. The main issues in recent arbitrations have included challenges against the decision of UNOPS to terminate Individual Contractor Agreements and related claims for damages.

Commercial disputes between UNOPS and private parties or government entities are usually resolved through negotiation or *ad hoc* arbitration in accordance with the UNCITRAL Arbitration Rules. The vast majority of commercial disputes involve private parties contracted by UNOPS to procure goods and/or services, including works, as part of UNOPS projects. In most of these cases, private parties have brought claims against UNOPS to claim damages arising from alleged breaches of contract. There have also been cases where UNOPS has a claim or counterclaim against private parties.

[1] Decisions of the UNDT and UNAT are available online at the following links: https://www.un.org/en/internaljustice/undt/judgments-orders.shtml; and https://www.un.org/en/internaljustice/unat/judgments-orders.shtml.

Commercial disputes between UNOPS and other entities of the United Nations system are usually resolved through consultation between the executive heads of the respective entities, failing which the matter is referred to the Secretary-General of the United Nations for resolution. This provision is usually included in the relevant agreements. As noted above, disputes between UNOPS and other United Nations entities are very rare in practice. They mostly refer to problems related to cooperation in the implementation of a United Nations project.

United Nations Office of Legal Affairs

[Original: English]

In so far as international legal disputes between the United Nations and other international organizations are concerned: please see [reply of the United Nations Office of Legal Affairs to] question 1 above.

Disputes between the United Nations and States:

In so far as international legal disputes between the United Nations and States are concerned, the method of settlement that has typically been employed is negotiation. While a considerable number of the agreements to which the United Nations is party contemplate the use of third-party means of settlement, in particular the establishment of arbitral tribunals,[1] the Office of Legal Affairs is aware of only a few cases in which steps have been taken, either by the United Nations or by a State party, to initiate arbitration, and does not have knowledge of cases in which arbitration has actually taken place with respect to such disputes.[2]

Section 30 of [the Convention on Privileges and Immunities of the United Nations (the General Convention)] identifies the means through which disputes concerning the Convention, including the privileges and immunities it accords, should be resolved. Disputes under the Convention shall be referred to the International Court of Justice (the Court), unless it is agreed by both parties to use another mode of settlement. If a difference arises between the United Nations and a Member State, a request shall be made for an advisory opinion from the Court. While advisory opinions are non-binding, the opinion of the Court "shall be accepted as decisive by the parties". The United Nations has sought an advisory opinion from the Court regarding the application of the General Convention on two occasions, in the Cumaraswamy[3] and Mazilu[4] cases, each in relation to differences with a Member State regarding the immunity of an expert on mission for the United Nations.

With respect to the Headquarters of the United Nations, the Agreement between the United Nations and the United States of America makes provision for the resolution of disputes as follows:

Section 21

(a) Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of

[1] See [reply of the United Nations Office of Legal Affairs to] question 9 below.

[2] In one case involving a United Nations entity, an arbitration was initiated against a Member State in 1985 and an arbitration panel constituted through the Permanent Court of Arbitration, but the claim was subsequently withdrawn and the arbitration proceedings terminated accordingly.

[3] *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62.

[4] *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 177.

State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice.

(b) The Secretary-General or the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.[5]

In the practice of the United Nations since the Headquarters Agreement was concluded in 1947, issues concerning the interpretation or application of the Agreement have almost exclusively been addressed though discussions with the United States Government without invocation of its dispute resolution mechanism. In 1988, the Secretary-General invoked section 21 of the Agreement with respect to United States legislation that would make unlawful the establishment or maintenance within the United States of any office of the Palestine Liberation Organization (PLO), including its Observer Mission to the United Nations in New York.

During the discussions between the Secretary-General and the United States Government on ensuring that the PLO Observer Mission would not be affected by the legislation, the Government maintained that a dispute did not exist, as the 90-day period for the entry into force of the legislation had not expired. On the basis of reports by the Secretary-General on these discussions and the impending entry into force of the legislation, the General Assembly adopted a resolution requesting, in accordance with Article 96 of the Charter, an advisory opinion of the International Court of Justice on the following question: "In the light of the facts reflected in the reports of the Secretary-General, is the United States of America, as a party to the Headquarters Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, under an obligation to enter into arbitration in accordance with section 21 of the Agreement?". The Court held that it was. In parallel, the PLO Mission initiated legal proceedings against the United States Government in a Federal District Court in New York, supported by *amicus curiae* briefs filed by the United Nations. The Court held that United States law did not require closure of the PLO Observer Mission as the Mission is covered by the Headquarters Agreement and that the Agreement remains a valid treaty obligation of the United States as it has not been superseded by the legislation in question. Accordingly, no further action was taken under section 21 of the Headquarters Agreement.

With respect to disputes between the United Nations and States involving any official of the United Nations who by reason of his/her official position enjoys immunity and whose immunity has not been waived by the Secretary-General,[6] the policy and practice of the Organization described in the report of the Secretary-General on the procedures in place for the implementation of article VIII of the General Convention remains applicable:

30. [I]f a claim is against an official for acts performed in the course of his or her official functions, the Organization will inform the claimant that the action

[5] Agreement regarding the Headquarters of the United Nations, signed at Lake Success, on 26 June 1947, and approved by the General Assembly of the United Nations, on 31 October 1947, with an Exchange of Notes, dated 21 November 1947, bringing this Agreement into effect, United Nations, Treaty Series, vol. 11, No. 147, p. 11.

[6] Section 29 (b) of the General Convention makes reference to disputes involving any official of the United Nations who by reason of his/her official position enjoys immunity, if immunity has not been waived by the Secretary-General.

is against the Organization itself and then the normal procedures for dispute resolution set out [in the report] should apply. It is only if an act relates to private activities of the official that the issue of waiver is examined.

31. Should there be a dispute not dealt with in accordance with the preceding paragraph involving any official of the Organization who by reason of his official position enjoys immunity, if immunity has not been waived, the United Nations, in accordance with Article VIII, section 29 (b) of the General Convention, is expected to make provisions for appropriate modes of settlement of such a dispute. The General Convention itself, however, does not provide for a specific mechanism for the settlement of disputes of this character. Nevertheless, the General Convention, by its article V, section 21, directs the United Nations to "…cooperate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities" set out in article V.

32. Consideration of cases relating to disputes referred to above has generally been delegated by the Secretary-General to the Office of Legal Affairs. Most of these cases are either traffic accidents or domestic disputes. In the case of traffic accidents, the matter is handled by the appropriate insurance company which, if it cannot settle the case, will appear in court to defend the claim. In the case of domestic disputes, immunity is usually waived. It should be noted, however, that the Secretary-General has discretionary authority, under section 20 of the General Convention, to consider in any case whether the immunity of any United Nations official would impede the course of justice and whether it can be waived without prejudice to the interests of the Organization. As noted above, in the great majority of cases reported to the Office of Legal Affairs, immunity has been waived. In a few cases, however, the Organization has not waived immunity but has cooperated with the competent authorities, on a strictly voluntary basis, by providing, for example, the necessary information with a view to assisting the authorities in the proper administration of justice and preventing the occurrence of any abuse of the privileges and immunities.[7]

Disputes between the United Nations and private parties:

The United Nations enjoys immunity from legal process by virtue of Article 105 of its Charter and Article II, Section 2 of the General Convention. It is in that context that Article VIII, Section 29 of the General Convention requires the United Nations to make provisions for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character.[8]

Consistent with article VIII, section 29 (a), of the General Convention, the United Nations makes a distinction between claims of a private law character and claims of a public law character. The latter category of claims falls outside the scope of article VIII, section 29, of the General Convention. Those include, for instance, claims made against the United Nations in relation to the exercise of its constitutional functions. Thus, the Secretary-General stated in his report to the General Assembly in 1995 that "the Organization does not agree to engage in litigation or arbitration

[7] Report of the Secretary-General on procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (A/C.5/49/65), paras. 30–32. See also Study of the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities that was prepared by the Secretariat of the United Nations for the International Law Commission in 1967, *Yearbook of the International Law Commission, 1967*, vol. II p. 296, at para. 386.

[8] See [reply of the United Nations Office of Legal Affairs to] question 1 above.

with the numerous third parties that submit claims … based on political or policy-related grievances against the United Nations, usually related to actions or decisions taken by the Security Council or the General Assembly in respect of certain matters".[9]

When determining whether a claim is of a private law character and thus falls within the scope of article VIII, section 29, of the General Convention, the United Nations assesses the nature of and the circumstances in which the alleged act or omission occurred and not merely the nature of the alleged conduct as described in the claim. A claim alleging tortious or delictual conduct, for example, does not automatically make it one of a private law character.

One category of private law claims that the United Nations has encountered are disputes arising out of contracts with private parties. The United Nations makes provision in its commercial contracts for recourse to arbitration in the event of disputes that cannot be settled amicably.[10] Since 1996, when the General Assembly took note of them,[11] it has been the accepted practice to resolve such disputes by *ad hoc* arbitration under the Arbitration Rules of UNCITRAL.[12] Likewise, disputes arising from contracts with consultants and individual contractors that cannot be settled amicably have been resolved by arbitration under the UNCITRAL Arbitration Rules, as reflected in their standard form contracts.[13] Standard clauses are provided below (see [reply of the United Nations Office of Legal Affairs to] question 9). In addition, United Nations Volunteers whose contracts are administrated by the United Nations Volunteers programme may, as reflected in their Conditions of Service, contest final administrative and disciplinary decisions made by resorting to arbitration under a tailored procedure to be conducted under the UNCITRAL Arbitration Rules.[14]

The United Nations has also encountered tort or delict claims for personal injury or property damage. As noted above (see [reply of the United Nations Office of Legal Affairs to] question 1), such claims often arise in the context of United Nations peace operations in the field. These third-party claims brought against United Nations peace operations, if of a private law character, are typically reviewed by Local Claims Review Boards, which are United Nations administrative panels. Consideration of such claims is subject to temporal and financial limitations established by the General

[9] Report of the Secretary-General on procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (A/C.5/49/65), para. 23.

[10] *Ibid.*, para. 3.

[11] *Ibid.*, para. 4. See General Assembly decision 50/503 of 17 September 1996, taking note of the practice, on the recommendation of the Fifth Committee, in *Official Records of the General Assembly, Fiftieth Session, Supplement No. 49*, vol. II (A/50/49 (vol. II)), p. 53.

[12] See General Assembly resolution 31/98 of 15 December 1976 recommending their use.

[13] See Administrative instruction: Consultants and individual contractors, ST/AI/2013/4, 19 December 2013, annex I: General conditions of contracts for the services of consultants and individual contractors, section 16.

[14] See the prior Conditions of Service for international United Nations Volunteers (effective 1 March 2015) (available at https://www.unv.org/sites/default/files/International_UN_Volunteers_Conditions_of_Service_0.pdf), section 18.2 and appendix X (setting out the arbitration procedure), under which international UN Volunteers may contest the final administrative or disciplinary decisions issued by the UNDP Administrator by a request for arbitration to be submitted to the Office of Legal Affairs. These have been superseded by the Unified Conditions of Service for UN Volunteers (version 1.1. effect 14 November 2022) (available at https://explore.unv.org/sites/default/files/2022-12/UNVcos20221%20Complete%20hi-res-final_compressed_NOV22.pdf), section XVII.6, under which UN Volunteers may contest such decisions by a request for arbitration to be submitted to the UNDP Administrator and the UNV Executive Coordinator.

Assembly in its resolution 52/247 of 26 June 1998.[15] The Office of Legal Affairs is aware of instances where claims filed by third parties with the United Nations were settled between the United Nations and the relevant Government on behalf of the third parties.[16]

Where third-party tort claims arise at United Nations Headquarters in New York, as mentioned under [reply to the United Nations Office of Legal Affairs to] question 1 above, the Organization's liability is governed by Headquarters Regulation No. 4,[17] adopted by the General Assembly pursuant to the Headquarters Agreement of 1947 between the United Nations and the United States of America.[18] This regulation limits the amount of compensation payable by the Organization for third-party claims arising from death, personal injury or illness or damage or loss to property arising from acts or omissions by the United Nations at its Headquarters. Such claims have been resolved in accordance with an internal review procedure promulgated by the Secretary-General.[19] If a claim by a third-party is considered justifiable and warrants compensation, the Organization seeks an amicable settlement.[20] Failing this, the third-party claimant will be offered the option to submit the claim to arbitration in accordance with the UNCITRAL Arbitration Rules.[21] In practice, as far as the Office of Legal Affairs is aware, all such disputes have been resolved by amicable settlement without the need to resort to arbitration.

Due to confidentiality considerations and limitations, the United Nations is only able to provide generic information on case law. In general, arbitration proceedings have been initiated against the Organization by commercial vendors providing goods or services in support of United Nations peace operations, as a result of disputes arising from the following types of contracts: leases, air charter, transportation by land or sea, delivery of ground and aviation fuel and food rations and related logistics

---

[15] The Organization's model status-of-forces agreement (Model SOFA) of 1990 and SOFAs and many SOMAs concluded since that date provide for such disputes to be settled by a standing claims commission. However, there is no available record of such a commission having ever been established in practice: see [rely of the United Nations Office of Legal Affairs to] question 9 below.

[16] This was the case with respect to claims lodged by Belgian nationals with the United Nations for damage to persons and property arising from the operations of the United Nations Operation in the Congo (ONUC), particularly those which took place in Katanga. The United Nations agreed that the claims of Belgian nationals who might have suffered damage as a result of harmful acts committed by ONUC personnel, not arising from military necessity, should be dealt with in an equitable manner. Following consultations with the Belgian Government and the assessment of the claims, the Secretary-General agreed to pay to the Belgian Government 1.5 million United States dollars in lump-sum and final settlement of all claims (excluding those involving military necessity). See Exchange of Letters constituting an agreement between the United Nations and Belgium relating to the settlement of claims filed against the United Nations in the Congo by Belgian nationals (New York, 20 February 1965), United Nations, *Treaty Series*, vol. 535, No. 7780, p. 197.

[17] General Assembly resolution 41/210 of 11 December 1986. See Report of the Secretary-General on procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (A/C.5/49/65), paras. 11–12.

[18] *Supra* fn. [5], see section 8.

[19] See Report of the Secretary-General on procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (A/C.5/49/65), para. 12 (which referred to the Secretary-General's Bulletin on resolution of tort claims (ST/SGB/230) dated 8 March 1989, which was later abolished with effect from 1 January 2018, as the Tort Claims Board established under the Bulletin was no longer active; see the Secretary-General's Bulletin on Abolishment of obsolete Secretary-General Bulletins (ST/SGB/2017/3) dated 27 December 2017).

[20] *Ibid*., see Secretary-General's Bulletin on resolution of tort claims (ST/SGB/230), para. 3.

[21] *Ibid*., para 6.

support services, and construction projects. The disputed issues have mainly related to contract performance, interpretation and termination. A few arbitrations have arisen from challenges to the Organization's decisions in public tenders, one involved a claim in tort (damage to property) and defamation and there have been some others initiated by United Nations Volunteers contesting disciplinary sanctions or seeking damages for service-incurred injury. Depending on their complexity, the disputed amounts and issues, the disputes have been adjudicated either by three-member tribunals or by sole arbitrators.

World Food Programme

[Original: English]

Disputes with other international organizations are very rare. Any difference on the interpretation or application of agreements between WFP and other international organizations are typically resolved through informal consultation or negotiation at working level, without resorting to the submission of formal claims or demands. Agreements between WFP and entities of the United Nations system envisage that, if a dispute is not resolved by negotiation within a specific time frame, the dispute is resolved through consultation between the executive heads of the parties, as appropriate.

Negotiation and/or arbitration are normally envisaged as methods for the settlement of disputes with international organizations that are not part of the United Nations System. The rare disputes with international organizations have mainly involved international organizations acting as donors to WFP and concerned the interpretation and application of contribution agreements, especially provisions on costs to be funded by such international organizations' contribution. Given that these disputes have been resolved through informal consultation, there are no formal decisions or awards on such dispute settlements.

While WFP agreements with States normally identify conciliation and arbitration as dispute settlement methods, disputes with States are customarily resolved through negotiation via the appropriate diplomatic channels.

The methods for the settlement of contractual disputes with private parties depends on the nature of the private party concerned and its relationship with WFP:

(*a*) Disputes with cooperating partners are normally settled amicably through informal consultation. Conciliation and arbitration are used only in the event informal consultation is not successful, which is in rare cases. These disputes may concern, for example, situations where the activities carried out by the cooperating partner are not in line with the specifications set out in the terms of the agreement between the cooperating partner and WFP, or the cooperating partner has breached its contractual obligations in relation to WFP's Anti-fraud and Anti-corruption Policy.

As these disputes are solved amicably and informally, there are no formal decisions or awards on such dispute settlements.

(*b*) Disputes with contractors, especially food suppliers and carriers, may arise from time to time and are usually relating to the delivery of goods not conforming to the contractual specifications (e.g. potential food quality and/or food safety issues) or goods delivered outside the agreed delivery period. WFP may also encounter real estate disputes concerning damages to the occupied premises or to WFP cargo/equipment stored/used therein. Aiming at maintaining a good commercial relationship with the contractors, the majority of such disputes are resolved through negotiations on an amicable basis. In very few cases, WFP resorted to the arbitration mechanisms envisioned in the relevant contracts.

(*c*) Disputes with staff and consultants – staff members and consultants may submit appeals against WFP administrative decisions to WFP Executive Director, as the first stage of the so-called "internal appeal process", and thereafter to the Appeals Committee of FAO, as the second stage. Thereafter, they may appeal further to ILOAT [...].[22] Decisions on pension-related matters may be appealed directly to the United Nations Administrative Tribunal.

(d) Disputes with affiliate workforce (other than consultants) – contracts with service contract holders, special service agreements holders, or casual labourers provide for alternative mechanisms for the resolution of disputes, typically arbitration, as these categories of personnel do not have access to the internal appeal process or before ILOAT.

Details on the methods for the resolution of disputes with third parties are addressed in [reply of WFP to] question 10 below.

World Health Organization

[Original: English]

Disputes with goods suppliers and service providers (juridical and natural persons)

The terms of the contract between goods suppliers/service providers and WHO provide that in case of a dispute there should be first an attempt to try to settle the matter amicably. Should this fail, the dispute would then be subject to conciliation. If the conciliation is unsuccessful, the dispute would be settled by arbitration.

In practice, WHO is successful in most cases in solving disputes with goods suppliers and service providers either through amicable discussions or conciliation. In such cases, and depending on the outcome of the amicable or conciliation discussions, a settlement agreement may be signed with the goods supplier(s) or service provider(s). For confidentiality reasons, WHO cannot disclose examples of a signed settlement agreement, but is in a position to share the template generally used within WHO (template attached as annex 2).[1]

The disputes rarely escalate to arbitration and often arbitration is not an appropriate tool to solve disputes between WHO and individual parties. WHO has however been involved in arbitral proceedings in a few cases in the past as follows:

– One example relates to the construction of one of WHO buildings in the early 1990s in Geneva, Switzerland. WHO had selected a Swiss contractor for the construction of a building following a competitive exercise (i.e. a request for proposals) and the parties agreed on a contract amount for the work and on a payment schedule. WHO applied a 2% deduction on the last instalment in accordance with a provision of the specifications of the contract (*cahier des charges*) which prescribed that a 2% deduction could be applied in the event of a payment within thirty days upon receipt of an invoice. This deduction was disputed by the contractor who claimed that the full amount was due as prescribed by the provisions of the contractor's standard contract annexed to its initial offer. The amicable discussions having failed, the parties initiated the arbitration process in 1992 and selected one arbitrator. In 1994, the arbitrator

[22] Relevant ILOAT case law is available on the ILOAT website at: https://www.ilo.org/tribunal/lang--en/index.htm. For example, in the period from 2011 to 2021, ILOAT has issued the following judgments concerning WFP: Nos. 3653, 3654, 3879, 3880, 3931, 4066, 4178, 4226, 4227, 4229, 4380, and 4381.

[1] Annex 2, as submitted by the WHO, is available on the website of the Commission at https://legal.un.org/ilc/guide/10_3.shtml#govcoms.

ruled that, although not expressly signed by both parties, WHO consented to the provisions contained in the contractor's standard contract which were annexed to the offer approved by WHO (such approval being evidenced by a purchase order referring to the contractor's offer). As a result, the parties were bound by the schedule of payment. It was also ruled that agreement on a payment schedule with precise payment dates released the contractor from the obligation of sending invoices, which therefore excluded the right for WHO to apply a 2% deduction as per the specifications (*cahier des charges*). WHO was condemned to pay the full contract amount with interest, including all costs and expenses resulting from the arbitration proceedings (arbitration award of 5 March and 19 February 1994[2]). Another example relates to a dispute concerning an alleged breach of contract by WHO in relation to security services in a sub-office of WHO in Nigeria. Following unsuccessful attempts made by the security services provider to sue WHO before local courts and unsuccessful attempts to resolve the matter amicably, arbitration proceedings were initiated by the company in Nigeria under the Nigerian Arbitration and Conciliation Act, as provided for in the agreement concluded between the parties, and eventually resulted in the dismissal of the claims made by the security services provider (arbitration award of 8 September 2018[3]).

Goods suppliers and service providers may also try to sue WHO before national jurisdictions, in which case WHO would claim its immunity from jurisdiction, normally through the ministry of foreign affairs of the country concerned, and recall the applicable recourses available to the goods suppliers and service providers as per the terms of their contract with WHO.

Only in exceptional circumstances would WHO appear before a national jurisdiction, normally through a local legal representative, and then it would do so to assert its immunity from jurisdiction. An example in this regard is the ruling delivered by the High Court of Abuja in Nigeria on 3 November 2014 in the context of a dispute between WHO and the owner of a building where WHO had some of its premises over the implementation of the tenancy agreement and where the Court recognized WHO immunity from legal process and its lack of jurisdiction in cases where WHO has not waived its immunity (ruling attached as annex 5).[4]

Disputes with staff members

In case of a dispute with staff members, informal and formal resolution of disputes mechanisms are open to the individuals pursuant to WHO established rules and policies.

– *Informal*

Staff members may use mediation to resolve a work-related concern, including a final administrative decision, which the staff member concerned considers to be in non-observance of the terms of his/her appointment.

– *Formal*

Should the staff member decide to use formal channels of resolution of dispute, he/she must first introduce before the Director of Human Resources a

[2] Attached to the WHO submission as annex 3. WHO has requested that the arbitral award contained in annex 3 to its submission be kept confidential.

[3] Attached to the WHO submission as annex 4. WHO has requested that the arbitral award contained in annex 4 to its submission be kept confidential.

[4] Annex 5, as submitted by the WHO, is available on the website of the Commission at https://legal.un.org/ilc/guide/10_3.shtml#govcoms.

request for the administrative review of the contested final administrative decision.

The administrative review decision of the Director of Human Resources may then be appealed before the WHO Global Board of Appeal which sits in Budapest, Hungary.

The Global Board of Appeal is an advisory body composed of a standing chair and vice-chair and WHO staff members (half appointed by the Director-General and the other half elected by staff members). The Global Board of Appeal will examine the appeal and submit its findings and recommendations to the Director-General, with whom the final decision on the appeal rests.

Should the staff member wish to contest the decision of the Director-General, he/she would have to file a complaint with ILOAT.

For confidentiality reasons, WHO cannot share the administrative review decisions, reports of the Global Board of Appeal or the decisions of the Director-General thereon. However, ILOAT case law related to WHO may be found on the ILOAT website (TRIBLEX).[5]

In some instances, staff members may also try to sue WHO before national jurisdictions in which case WHO would assert its immunity, normally through the ministry of foreign affairs of the country concerned, and recall the applicable recourses available to the staff member. An example in this regard is the judgment rendered by the Delhi High Court in India on 4 December 2001 in the context of claims brought forward against WHO by a former staff member for breach of contract and where the Court recognized its lack of jurisdiction in cases where WHO has not waived its immunity (see *Ochani v. WHO*, judgment attached as annex 6).[6]

Disputes with persons with no contractual relationship with WHO, either juridical or natural persons

– *Disputes of a constitutional nature related to the exercise of the WHO mandate, operations and activities*

In such cases where WHO is sued before national jurisdictions for disputes of a constitutional nature related to the exercise of its mandate, operations and activities, WHO would claim immunity, normally through the ministry of foreign affairs of the country concerned.

Only in exceptional circumstances would WHO appear before a national jurisdiction and then it would do so to assert its immunity from jurisdiction. An example in this regard is the opinion and order delivered by the United States District Court, Southern District of New-York, on 5 April 2021 in re *Kling v. WHO*[7] (opinion and order attached as annex 7). This case originated from a civil lawsuit filed against WHO in United States federal court (the Southern District of New York) by three individuals (as a putative class action) who claimed that they suffered damages related to the COVID-19 pandemic caused by alleged gross negligence of WHO including by WHO allegedly failing to timely declare COVID-19 a public health emergency of international concern under the International Health Regulations (2005) and failing to provide “correct treatment guidelines” to WHO member States. In its opinion and order granting the motion of WHO to dismiss the case, the Court found that WHO did

[5] https://www.ilo.org/dyn/triblex/triblexmain.showList?p_lang=en&p_org_id=67.

[6] Annex 6, as submitted by the WHO, is available on the website of the Commission at https://legal.un.org/ilc/guide/10_3.shtml#govcoms.

[7] Annex 7, as submitted by the WHO, is available on the website of the Commission at https://legal.un.org/ilc/guide/10_3.shtml#govcoms.

not waive its immunity and that it was immune from the suit under the United States International Organizations Immunities Act of 1945.

– *Tort claims*

Such claims would normally be handled by WHO insurance providers. In very few cases, WHO did not have adequate insurance in place and therefore resolved the matter amicably either directly with the victims or through the mediation of local authorities.

– *"Hold harmless clause"*

In countries where WHO is present, it has concluded bilateral agreements for the provision of technical assistance with the governments. Such agreements contain a clause whereby the Government shall be responsible for dealing with any claims which may be brought by third parties against WHO and its advisers, agents and employees and shall hold harmless the Organization and its advisers, agents and employees in case of any claims or liabilities resulting from operations under the agreement, except where it is agreed by the Government and the Organization that such claims or liabilities arise from the gross negligence or wilful misconduct of such advisers, agents or employees.

When the circumstances so require, WHO would invoke such a clause.

World Intellectual Property Organization

[Original: English]

As an international organization, WIPO has put in place an internal justice system to address and resolve staff matters and disputes in the workplace. In that system, staff members are provided with a formal avenue to bring cases when they believe they have an employment-related grievance. When a staff member wishes to challenge an administrative decision that adversely and individually affects them, they are required, as a first step, to file a request for review of that decision with the Director General. Staff members may also submit a rebuttal of their performance appraisal to the Director General. Furthermore, staff who believe they have been subjected to prohibited conduct by other members of personnel may submit a complaint to the Director of WIPO Internal Oversight Division for investigation before a decision is taken on the complaint by the Director General.

Decisions on requests for review, performance rebuttals and grievance complaints can be appealed before the WIPO Appeal Board ("Board"), which issues recommendations to the Director General for him to take a final administrative decision. Staff who wish to challenge a disciplinary measure imposed on them may also appeal directly to the Board. After having exhausted all means available to them internally, staff have the right to challenge the Director General's decision taken on their internal appeal before ILOAT, which jurisdiction WIPO has recognized and which judgments are final and binding.[1]

As at the 134th session in July 2022, ILOAT had issued 154 judgments involving WIPO since 1983. The cases covered various topics such as appointments (type, length, and termination), entitlements and benefits, service-incurred illness, performance management, harassment, whistle-blower protection, and disciplinary measures.

However, staff members are strongly encouraged to try to resolve workplace disputes through informal channels. This includes mediation by the WIPO Ombudsperson, the Human Resources Management Department, a higher-level

[1] The case law of ILOAT is available at: https://www.ilo.org/tribunal/lang--en/index.htm.

supervisor (in case of a dispute over performance for instance), or any other available informal conflict resolution mechanism (Conflict Prevention Relays, WIPO internal coaches, WIPO Staff Council).

The informal and formal channels of dispute resolution are not mutually exclusive. This means that the resolution of a dispute can be initiated using both formal and informal channels. Resort to informal resolution of conflicts does not affect the deadlines relating to the formal resolution channels, which remain intact unless expressly suspended or extended in accordance with the applicable provisions. This also means that a dispute that was started using formal channels can later be resolved informally, through a negotiated settlement for instance.

World Trade Organization

[Original: English]

The methods that have been used include:

(*a*) diplomatic channels, negotiation, and consultations (with other international organizations, in matters concerning staff exchanges and information sharing); and

(*b*) negotiation, consultations, mediation, conciliation, arbitration, and judicial/legal settlement (with private parties, in matters concerning contractors, staff members, and consultants).

3. Question 3 – In your dispute settlement practice, for each of the types of disputes/issues arising, please describe the relative importance of negotiation, conciliation or other informal consensual dispute settlement and/or third-party dispute resolution, such as arbitration or judicial settlement.

Asian International Arbitration Centre

[Original: English]

In so far as it relates to disputes encountered by AIAC with private parties under Malaysian domestic law, AIAC has settled most of its litigation disputes through the practice of negotiation and/or conciliation during the course of litigation. Where a settlement has not been successful, litigation has proceeded and often concluded favourably for AIAC. In so far as preferred dispute settlement methods utilised by AIAC in these matters, AIAC considers negotiation and conciliation key mechanisms in both, preventing the escalation of conflict in the court and to settle disputes once they have arisen.

Common Fund for Commodities

[Original: English]

CFC always tries to negotiate any issues with counterparties (which are private parties) and has not (yet) resorted [to] arbitration or settlement of any disputes through the courts. However, it is certainly not to be excluded that CFC will resort [to] formal dispute settlement.

Eurasian Group on Combating Money Laundering and Financing of Terrorism

[Original: English]

EAG and its Secretariat have not been involved in any dispute settlement from its foundation time.

Food and Agriculture Organization of the United Nations

[Original: English]

For contractual disputes with service providers and other procurement-related disputes, informal consensual dispute settlement is very important. Conciliation and arbitration require resources that are often not justified in view of the nature or amount of the dispute and, if the dispute arises in the context of activities funded by voluntary contributions, FAO is legally obliged to limit its costs pursuant to its Financial Regulations.

For labour disputes, informal consensual dispute settlement is important. In particular, negotiated agreements to definitively resolve disputes are expedient and cost-effective, limiting potential reputational damage to FAO. The internal appeals procedure and ILOAT are similarly important because they also allow for definitive resolution without preventing informal consensual dispute settlement being explored while the litigation is ongoing where appropriate.

For certain disputes involving victims of harm attributable to FAO who are in no contractual relationship with FAO, FAO uses no-cost grievance mechanisms at the country-level in accordance with its Framework for Environmental and Social Management. The Office of the Inspector-General has the mandate to independently review complaints/grievances that cannot be resolved at the country-level. Requests for correction have been received pursuant to the FAO Data Protection Policy and have been resolved through a process of internal consultation and engagement with the data provider.

Organization of African, Caribbean and Pacific States

[Original: English]

Alternative dispute resolution is the most important dispute settlement mechanism for OACPS, i.e., negotiation by way of conciliation, mediation, arbitration and enforcement of an arbitral award through the enforcement system of a State.

Organisation for the Prohibition of Chemical Weapons

[Original: English]

OPCW attaches great importance to informal consensual dispute settlement mechanisms. To the extent possible, settlement by negotiations is usually attempted before recourse to any formal dispute settlement procedure.

For disputes arising from contracts pertaining to the purchase of goods and/or services, the relevant General Terms and Conditions for Goods and for Services contain dispute settlement clauses which refer to conciliation in accordance with the Conciliation Rules of UNCITRAL, and arbitration pursuant to the UNCITRAL Arbitration Rules. Similar mechanisms are in place to address potential disputes which may arise from OPCW procurement activities.[1]

[1] To date, no such dispute has yet arisen.

Permanent Court of Arbitration

[Original: English]

PCA has experience with a variety of dispute resolution mechanisms, including negotiation and conciliation, which may be precursors to arbitration. In the cases that PCA administers, arbitration appears to be the most important and useful method of dispute settlement for all types of disputes (as described in paragraphs 6–7 of the [questionnaire]).

Further, arbitration is the most important and useful method of dispute settlement for the agreements to which PCA is a party where a dispute cannot be resolved through bilateral discussions.

United Nations Conference on Trade and Development

[Original: English]

Given that arbitration is very costly and time consuming, UNCTAD attempts to resolve as many disputes as possible through negotiation and amicable settlement.

United Nations Development Programme

[Original: English]

Where appropriate, UNDP pursues informal settlement through negotiation with staff members and United Nations Volunteers. Informal settlement through negotiation result in about six settlements per year. Details of cases before the United Nations tribunals can be found in the public record of those judgments. For the United Nations Volunteers, arbitration is set out in the Unified Conditions of Service applicable to United Nations Volunteers as part of the formal dispute resolution process, amounting to three/four cases a year.

For contractors and non-staff personnel, as indicated above, UNDP actively seeks to engage in negotiation towards an amicable settlement where possible.

United Nations Framework Convention on Climate Change

[Original: English]

UNFCCC has only resorted to amicable settlement, through negotiations.

United Nations Office for Project Services

[Original: English]

Usually, all UNOPS contracts contain a dispute resolution clause which provides that: (1) the contracting parties shall use their best efforts to settle their case amicably through negotiation (in addition to negotiation, some of UNOPS' contracts also provide for conciliation under the UNCITRAL Conciliation Rules); and (2) if the contracting parties are unable to resolve their dispute amicably, they are entitled to initiate *ad hoc* arbitration under the UNCITRAL Arbitration Rules.

To avoid the costs and other challenges associated with arbitration, UNOPS places a high priority on resolving disputes with third parties through settlement negotiations whenever possible. This is especially the case for disputes involving government entities, due to the status of UNOPS as a United Nations entity. Although UNOPS has faced a relatively high number of arbitration cases in the context of commercial disputes in recent years, the majority of UNOPS disputes are resolved through negotiation.

United Nations Office of Legal Affairs

[Original: English]

In so far as international legal disputes between the United Nations and States are concerned, please see the [reply of the United Nations Office of Legal Affairs] to question 2 above.

Where contractual disputes encountered by the United Nations present potential exposure to liability, the United Nations aims to settle them amicably. In general, the majority of disputes are settled amicably, without going to arbitration; and, of the claims that do go to arbitration, the majority are settled amicably before going through the full arbitration process and concluding with an arbitration award.

Only a small number of disputes arising from commercial contracts (relative to their overall high volume) have been escalated to arbitration. The majority of such cases have arisen from complex contractual arrangements between the United Nations and commercial vendors providing logistical support to the Organization's peace operations, including the provision of fuel, food rations and catering services, transport services (by air, land and sea) and construction projects. A few arbitrations have arisen from challenges or claims in other contexts, as indicated in the [reply of the United Nations Office of Legal Affairs to question] 2 above.

Similarly, as far as the Office of Legal Affairs is aware, disputes arising out of the Organization's contracts with consultants, individual contractors and United Nations Volunteers have led to arbitration only in a very small number of cases.[1] Most cases have been settled amicably.

The 2017 Secretary-General's Report on the Administration of justice at the United Nations sets out a comprehensive analysis of disputes involving non-staff personnel, including individual contractors and consultants, for the United Nations system.[2] The United Nations continues to assert its privileges and immunities, including immunity from legal process, through the relevant Government in cases where claims invoking domestic labour law are filed before national courts against the United Nations and proceed contrary to the privileges and immunities accorded to the United Nations.

World Food Programme

[Original: English]

For disputes with international organizations and States, informal consultation is the most important method of dispute settlement, as it is compatible with WFP and the other international organizations and States' respective status (and where applicable privileges and immunities), it is time and cost effective, it is more likely to lead to a mutually satisfactory outcome, and preserves the longstanding collaboration among international organizations and with States to deliver their public

[1] Arbitration under the UNCITRAL Arbitration Rules has been the formal resolution mechanism for these disputes, as these categories of personnel do not have access to the Organization's internal system of administration of justice. For consultants and individual contractors, arbitration is provided under the United Nations General Conditions of Contracts for the Services of Consultants and Individual Contractors (ST/AI/2013/4, annex I). For United Nations Volunteers, a formal recourse procedure is provided under the Unified Conditions of Service for UN Volunteers (version 1.1. effect 14 November 2022), section XVII.5, under which United Nations Volunteers may contest administrative or disciplinary decisions by requesting a review by the UNV Executive Coordinator, with a further review by the UNDP Administrator, before requesting arbitration.

[2] Report of the Secretary-General on administration of justice at the United Nations, (A/72/204), annex II.

mandate. In particular, disputes with States are often solved through consultation by diplomatic channels or engagement at the political level.

Disputes with private parties:

(*a*) In disputes with cooperating partners, for the reasons described above, the Parties are required to use their best efforts to settle amicably, including by conciliation. Arbitration is used as last resort in case the dispute cannot be settled amicably.

(*b*) For disputes with contractors, depending on the merits of the case, commercial negotiations between the parties usually take place as a primary step as they have the same benefits as informal consultation (see above). In fact, the applicable dispute resolution clauses inserted in the relevant WFP contracts foresee that best efforts shall be used to amicably settle any dispute. Only in the unlikely and rare event that an amicable resolution fails or is not possible, the parties may resort to arbitration.

(*c*) Disputes with staff and affiliate workforce – informal dispute resolution/settlement is always given serious consideration as the preferred method for solving disputes and considered on a case-by-case basis, depending on the circumstances of each individual case. In disputes involving casual labourers and service contract holders, when amicable settlement is not possible, a request for conciliation under the UNCITRAL Conciliation Rules is a mandatory prerequisite to arbitration.

World Health Organization

[Original: English]

Disputes with goods suppliers and service providers (juridical and natural persons)

Informal consensual mechanisms are paramount and most of the time allow for a successful closing of the case without reaching the stage of arbitration. Given the procedural complexity and cost, arbitration is often not a viable resolution mechanism for such disputes.

Disputes with staff members

Both informal and formal mechanisms play an essential role in the resolution of the dispute. Depending on the specific circumstances of the dispute, one or the other may play a more significant role. The majority of cases, however, go to formal mechanisms, including ILOAT.

Disputes with persons with no contractual relationship with WHO

To the extent WHO would enter into the substance of such disputes, informal consensual methods of settlements are deemed essential as they may prevent the case from escalating to third-party dispute resolution.

World Intellectual Property Organization

[Original: English]

In relation to staff disputes, as noted above, WIPO has in place an internal justice system, which includes both formal and informal methods of conflict resolution.

The Ombudsperson is a neutral interlocutor, who mediates in conflicts between individual staff members or with management towards reaching amicable solutions to workplace-related difficulties. The Ombudsperson plays a role in preventing

conflict and restoring peaceful working relations, and offers an important in-house alternative to formal complaint-handling. The aim of the Office of the Ombudsperson is to provide assistance towards resolving these conflicts as early as possible, in an informal and constructive manner. Early and collaborative approaches to addressing conflict contribute to a respectful, harmonious and productive working environment and promote good working relations, which are key conditions for organizational and operational efficiency.

Staff are strongly encouraged to consider any of the available informal conflict resolution mechanisms if, for example, they wish to rebut their performance appraisal. However, informal conflict resolution may not be appropriate for certain types of disputes (*e.g.*, disciplinary matters and mobbing/harassment).

Negotiation is a useful informal dispute resolution tool in order for WIPO to reach settlement agreements with its staff members when they are in the interests of its good administration, which is assessed on a case-by-case basis. This would be the case, for instance, to salvage an employment relationship with a long-serving staff member and/or if the dispute involves a legal, financial, or reputational risk for WIPO. Under the terms of a settlement agreement, WIPO typically agrees to pay a certain amount of money to the staff member (although not all settlement agreements have a financial component), in exchange for which the staff member renounces, *inter alia*, any and all appeals against WIPO (and sometimes against another staff member, as the case may be (in relation to grievance proceedings)).

World Trade Organization

[Original: English]

WTO strongly favours negotiation, conciliation, and other amicable resolution methods. If these methods are unsuccessful, other methods are considered, including arbitration and judicial/legal settlement.

4. Question 4 – Which methods of dispute settlement do you consider to be most useful? Please indicate the preferred methods of dispute settlement for different types of disputes/issues.[‡]

Asian International Arbitration Centre

[Original: English]

The answer to this question is drawn from the knowledge of AIAC and experience from AIAC observations in the provision of and administering of dispute resolution services such as negotiation, conciliation, mediation and arbitration generally.

From the AIAC observation of administering cases, parties have advocated *arbitration as a preferred form of dispute resolution after failing to achieve a middle ground during negotiations and/or conciliation*. A contributing factor is that arbitration is enforceable under countries that are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.[1] The parties have, time and again, considered this factor as the benefit of opting for arbitration.

[‡] Cross-references contained in the questions were omitted to avoid confusion. Question 4 made reference to paragraphs 6, 7 and 9 of the questionnaire. For the text of paragraphs 6, 7 and 9 of the questionnaire, please see footnotes 8 and * above.

[1] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), United Nations, *Treaty Series*, vol. 330, No. 4739, p. 3.]

Common Fund for Commodities

[Original: English]

For parties located in the European Union, CFC prefers court settlement, as it is easy to execute judgments in the European Union[.] [F]or parties located in other countries, CFC prefers arbitration.

Eurasian Group on Combating Money Laundering and Financing of Terrorism

[Original: English]

EAG supposes that for the interest of the international organization's reputation the most preferable types of dispute settlements are negotiation, mediation, and conciliation. If such methods are not resultative arbitration and the judicial settlement may be used. Nevertheless, in the situation of committing a crime against an international organization or its staff, EAG believes that there should be criminal proceedings initiated through the resort to regional agencies.

Food and Agriculture Organization of the United Nations

[Original: English]

In respect of disputes with private parties, such as contractual disputes with service providers and other procurement-related disputes, negotiation is most useful, in particular as many suppliers or service providers wish to maintain a continuing relationship with FAO and are therefore motivated to resolve the dispute.

For labour disputes, the internal appeals procedure and ILOAT are most useful because there is an established structure with internationally recognized jurisprudence providing a level of stability and ability to anticipate outcomes that also allows for a negotiated settlement, as appropriate, at any stage of the procedure. Ombuds services are also useful because a neutral intermediary may be helpful in resolving disputes at an early stage and at minimal cost to FAO.

Organization of African, Caribbean and Pacific States

[Original: English]

Alternative dispute resolution mechanisms are the most useful to resolve conflicts between OACPS member States. By such non-confrontational dispute resolution procedures, face can be preserved, and commercial relationships maintained. For staff and project matters alternative dispute resolution methods are less successful.

Organisation for the Prohibition of Chemical Weapons

[Original: English]

OPCW considers informal consensual dispute settlement methods, e.g., consultation and negotiations to be most useful. In the event that such methods do not result in amicable settlement, conciliation and arbitration are preferred to formal litigation.

Permanent Court of Arbitration

[Original: English]

[See reply of PCA to question 3].

United Nations Conference on Trade and Development

[Original: English]

This depends on the dispute itself, the identity of the other party to the dispute, and the resources available. Since UNCTAD usually strives to maintain a positive working relationship with the other party (be it a Member State, another international organization or a private party), UNCTAD would favour amicable settlement or negotiation in the majority of cases. However, there are some instances where it is in the interests of UNCTAD to take a strong stance and pursue a claim through formal channels, e.g., if there are allegations of fraud/misconduct against a vendor. In such cases, a formal arbitration process would be considered optimal.

United Nations Development Programme

[Original: English]

UNDP considers negotiation as the most useful method of dispute settlement for contractors and non-staff personnel.

United Nations Framework Convention on Climate Change

[Original: English]

Amicable settlement, through negotiations.

United Nations Office for Project Services

[Original: English]

As noted above, to avoid the costs and other challenges associated with arbitration, UNOPS places a high priority on resolving disputes with third parties through settlement negotiations whenever possible. This applies to both personnel and commercial disputes.

UNOPS has used mediation particularly in the context of personnel disputes, and has seen great added value from it. Even though UNOPS has not resorted to mediation or conciliation in practice in recent years with regard to commercial disputes, UNOPS sees great added value in these types of consensual dispute resolution procedures.

United Nations Office of Legal Affairs

[Original: English]

Amicable settlement and arbitration have both been found to be useful methods for the United Nations to resolve disputes arising out of contracts with commercial vendors. While the vast majority of the disputes are settled amicably, there are instances where it is in the Organization's interests to take a strong stance and pursue settlement through arbitration, e.g., if it would be consistent with its assessment of liability or if there are allegations of fraud or misconduct against a commercial vendor or an individual contractor, consultant or United Nations Volunteer.

Disputes involving non-staff personnel have also been successfully resolved by mediation with the involvement of the Office of the United Nations Ombudsman and Mediation Services.[1]

[1] See https://www.un.org/ombudsman/.

World Food Programme

[Original: English]

In disputes with international organizations and States, amicable negotiation has proved to be the most effective dispute settlement method. Resulting in a mutually agreeable solution, negotiation preserves the long-term relationship and collaboration with international organizations and States, which is crucial for the WFP food aid and security operations, support to States' economic and social development, and to meet refugee and other emergency and relief food needs. In addition, negotiation is the most time and cost-effective method, minimizing impact on operations continuity and budget.

Amicable negotiation is also the preferred method for the settlement of disputes with cooperating partners and contractors. WFP wishes to maintain good working relationships with its cooperating partners and contractors and avoid any pipeline issues that could impede the fulfilment of its mandate. However, in exceptional cases, it may revert to arbitration against contractors.

WFP typically gives serious consideration to amicable resolution of employment disputes, bearing in mind the nature of the dispute, the legal risks involved and the need to preserve the employment relationship as well as the type of resolution mechanism available to the employee.

World Health Organization

[Original: English]

For disputes with all type of private parties, informal consensual resolution is generally very useful as it may help prevent the case escalating to potentially lengthy and heavy third-party litigation, especially arbitration.

In the case of disputes with goods suppliers and service providers (juridical and natural persons), WHO favours an informal consensual resolution of the dispute since arbitration, which is the last recourse should amicable discussions and conciliation fail, can be a very complex and time- and resource-consuming process for both parties.

For disputes with staff members, informal or formal dispute resolution may be best suited depending on the specific circumstances of the dispute.

As for disputes with persons with no contractual relationship with WHO, third-party litigation before a national jurisdiction is not deemed to be appropriate considering WHO applicable immunities and potential interferences in the independent exercise by WHO of its mandate at local level. When the circumstances so require (such as tort claims), WHO will instead favour an amicable resolution of the dispute, without prejudice to its privileges and immunities.

World Intellectual Property Organization

[Original: English]

In relation to staff disputes, not one method of dispute settlement is more useful than the other. Rather, the different methods are available and work effectively, and sometimes in parallel, to address different types of circumstances.

In addition to the information provided in [reply of WIPO] to [question 3], informal conflict resolution is often viewed as quicker, less stressful, and more effective than the formal procedure. The formal procedure is more appropriate when

the dispute concerns a purely legal matter (such as the interpretation of a written provision).

World Trade Organization

[Original: English]

For all types of disputes/issues, there is a strong preference for negotiation, conciliation, and other amicable resolution methods.

5. Question 5 – From a historical perspective, have there been any changes or trends in the types of disputes arising, the numbers of such disputes and the modes of settlement used?

Asian International Arbitration Centre

[Original: English]

AIAC has, for the last 40 years, been a dispute resolution provider in alternative dispute resolution services such as mediation and arbitration. AIAC has witnessed the impact of alternative dispute resolution in both international and domestic law settings.

Regarding arbitration, in 2018 AIAC registered 90 cases.[1] In 2019, 125 cases were registered while 2020 had 100 registered cases.[2] In 2021, AIAC registered 117 cases.[3] Of the latest number of registered cases, 88.88 per cent of cases are domestic while 11.11 per cent are international.[4]

Mediation cases have been on the rise, with only one registered case in 2015, three in 2019, four in 2020 and eight in 2021.[5]

The highest number of Domain Name Disputes appointments was registered in 2018, when AIAC listed 12 cases. In 2019, 11 cases were registered, eight in 2020, and seven in 2021.[6]

In an exclusively domestic setting, the introduction of the Construction Industry Payment and Adjudication Act 2012 (CIPAA 2012) brought adjudication to the center stage, and from 2014 to 2019 the AIAC saw a sharp and constant increase in its usage for parties in the construction industry, registering 816 cases at its highest point.[7] In this sense, in 2020 the AIAC registered 537 cases, and 530 in 2021. Overall, this shows a 34.19 per cent reduction in registered cases.[8] 76.5 per cent of AIAC administered arbitrations in 2019 were in construction. The remaining 23.5 per cent encompasses matters of banking, finance, insurance, company, and energy law.[9]

It is important to note that the statistics above do not contemplate a situation where AIAC was a party to those disputes.

[1] AIAC Annual Report 2018, p. 18.
[2] AIAC Annual Report 2019–2020, p. 12.
[3] AIAC Annual Report 2021, p. 12.
[4] AIAC Annual Report 2021, p. 12.
[5] AIAC Annual Report 2015, p. 8, AIAC Annual Report 2019–2020, p. 12, AIAC Annual Report 2021, p. 20.
[6] AIAC Annual Report 2021, p. 20.
[7] AIAC Annual Report 2019–2020, p. 19.
[8] AIAC Annual Report 2019–2020, p. 19.
[9] AIAC Annual Report 2019–2020, p. 16.

Common Fund for Commodities

[Original: English]

No.

Eurasian Group on Combating Money Laundering and Financing of Terrorism

[Original: English]

EAG has not observed any such trends or changes.

Food and Agriculture Organization of the United Nations

[Original: English]

Over the last 10 to 15 years, there has been no marked change in the types of disputes arising. During this period, there has been no marked change in the number of contractual disputes with service providers and other procurement-related disputes, which remain low relative to the volume of procurement undertaken by the Organization. Labour-related claims raised by private parties against FAO before national courts tend to arise mainly in certain regions, in particular Latin America.

With regard to the modes of settlement, the FAO Office of the Ombudsman was established in 2015. Otherwise, there has been no marked change in the modes of settlement.

Organization of African, Caribbean and Pacific States

[Original: English]

In the last 10 to 15 years, there have been no observable changes in the type or frequency of disputes, nor the modes of dispute settlement.

Organisation for the Prohibition of Chemical Weapons

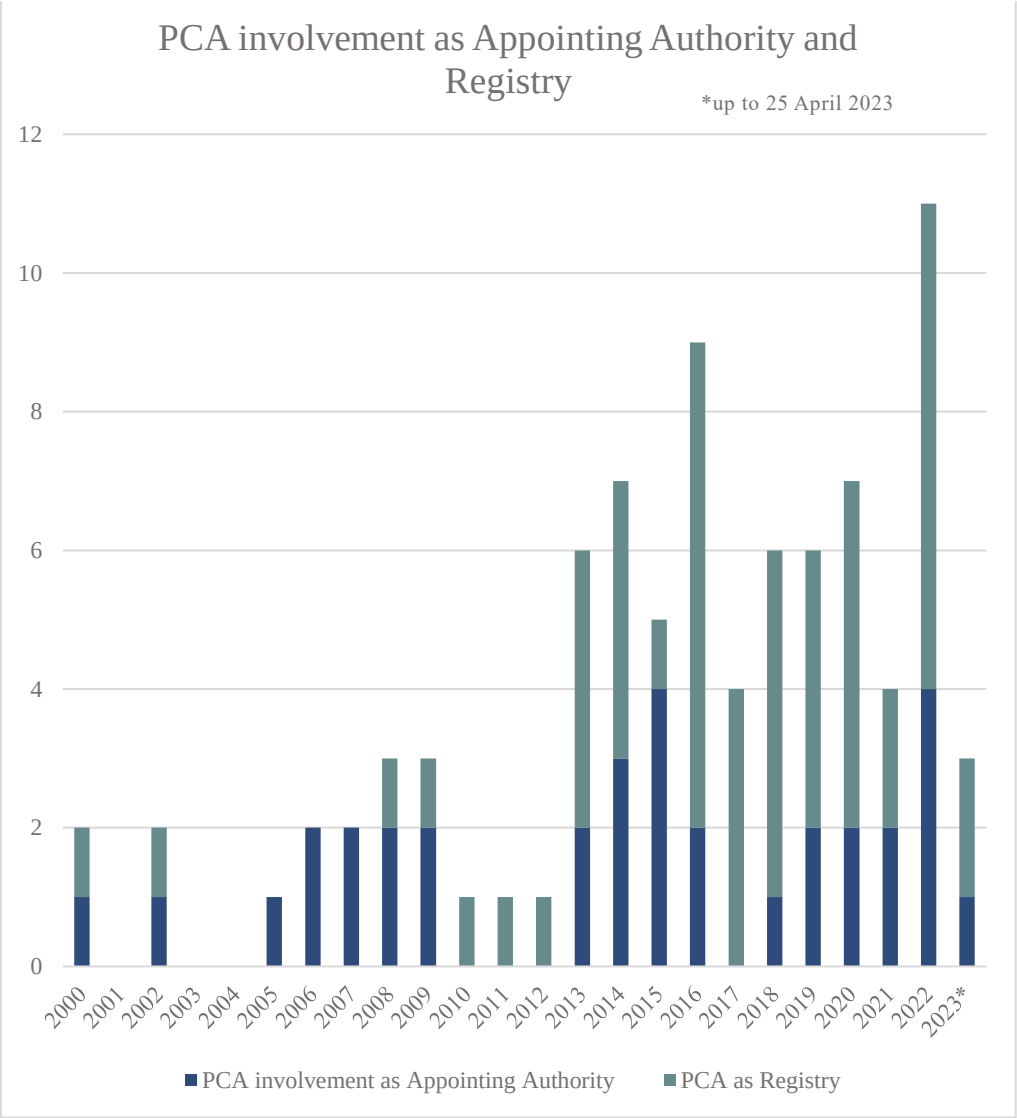
[Original: English]

There is no discernible trend that can be mentioned.

Permanent Court of Arbitration

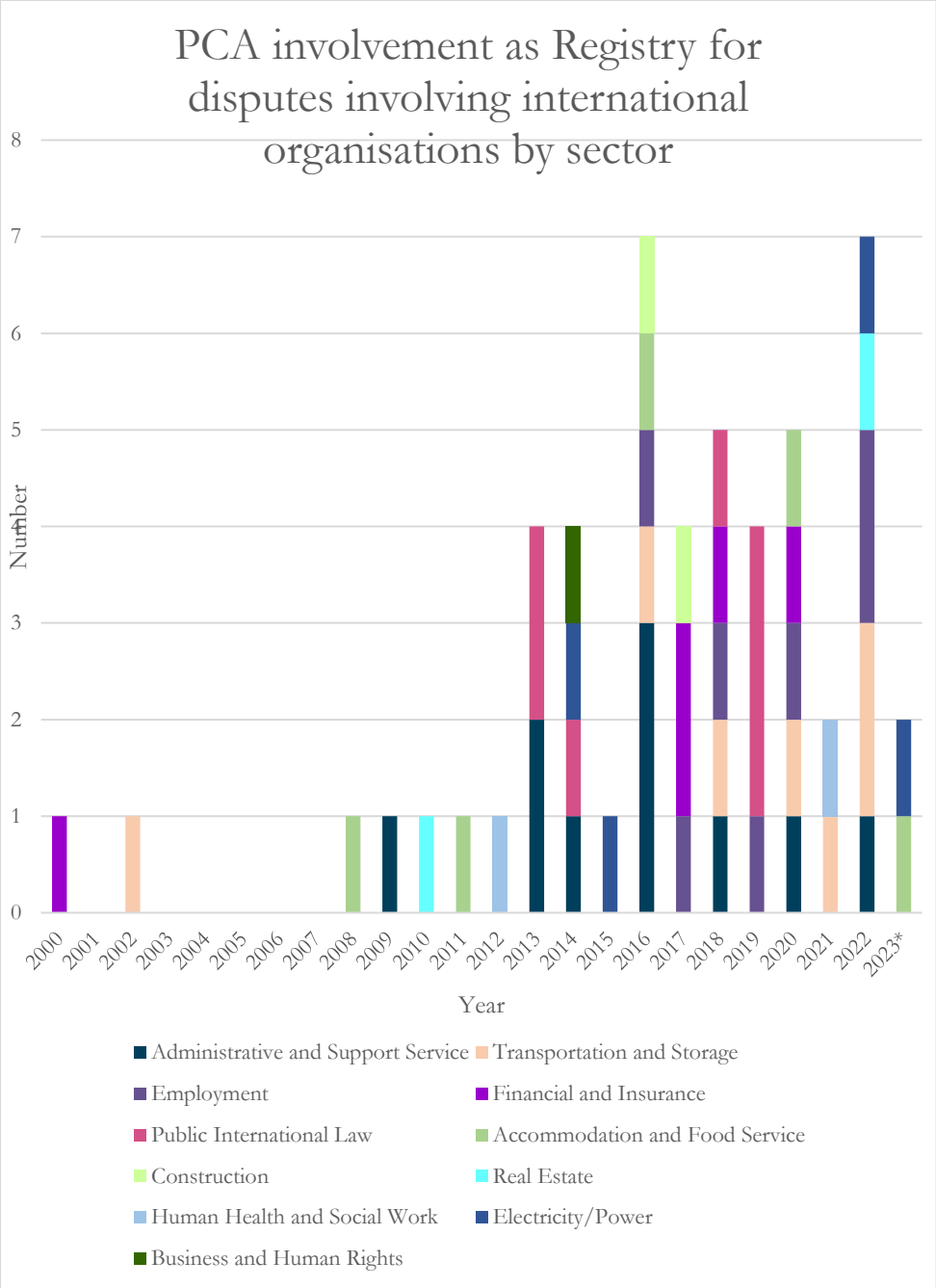
[Original: English]

In recent years, PCA has observed an increase in the number of cases it administers that involve international organizations. The graph below depicts the number of new cases each year involving an international organization that has been added to the PCA docket from the year 2000 until 25 April 2023.

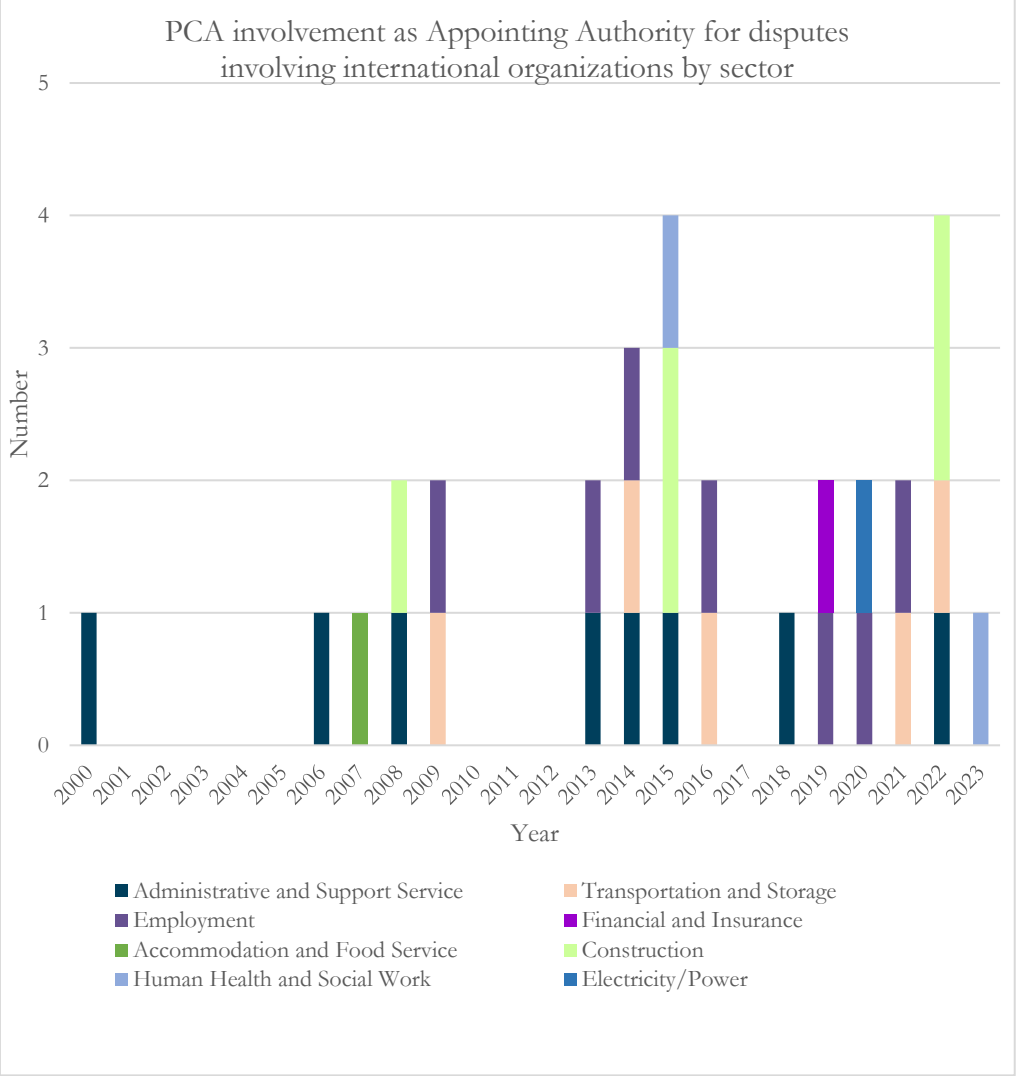


The type of dispute (as set out in paragraph 7 of the [questionnaire]) in which PCA has seen the greatest increase has been disputes involving international organizations and private parties. Of the 54 disputes it has administered as registry in total, the majority (35 cases) have been added to the PCA docket in the last seven years. PCA involvement as an appointing authority has been more evenly spread out, with the number of requests to act as appointing authority in cases involving international organizations in the last six years (12 requests) being relatively uniform.

Additionally, there have been changes in the sector in which disputes involving international organizations have arisen. Whilst disputes involving administrative and support services, and finance and insurance were especially common in the mid-2010s, these have proportionately been replaced by a rise in employment, and transportation and storage disputes in the early 2020s. Set out below is a chart indicating a sector-based breakdown of PCA-administered disputes involving international organizations.



By contrast, there have been fewer changes as regards sector in the cases in which PCA has been called upon to facilitate the constitution of the tribunal. Such disputes remain predominantly based on employment, administrative and support services, and transportation and storage. This can be seen in the figure below:



United Nations Conference on Trade and Development

[Original: English]

Overall trend toward litigiousness, especially in the private sector.

United Nations Development Programme

[Original: English]

For United Nations Volunteers, the last few years have seen a slight uptick in the number of cases taken to arbitration.

For contractors and non-staff personnel, the number of such disputes has been consistent.

United Nations Framework Convention on Climate Change

[Original: English]

As aforementioned, UNFCCC has been fortunate to not have many disputes. There is no discernible trend. Two or three instances of settling intellectual property violation claims, cannot be termed as a trend.

United Nations Office for Project Services

[Original: English]

Recently, the number of commercial disputes involving private parties (in particular, in the area of infrastructure) has increased, in part due to the Organization's increased engagement with the private sector.

United Nations Office of Legal Affairs

[Original: English]

In its first 40 years, the United Nations primarily settled its contractual disputes amicably. As far as the Office of Legal Affairs is aware, before the 1990s, the United Nations, including its Funds and Programmes, was rarely involved in arbitration.[1]

Since the mid-1990s, there has been an upward trend in disputes with commercial vendors involving the United Nations. Many such disputes have been resolved amicably without the need for arbitration. Nonetheless, there has been a rise in arbitrations involving the United Nations, largely due to "the difficulties that arose with the sudden exponential growth in peacekeeping activities in the late 1980s and early 1990s, and the switch from traditional reliance on member State Governments for the provision of a wide range of support services to the use of commercial vendors".[2] Over the past three decades, around 40 arbitrations were initiated by commercial vendors in which the Office of Legal Affairs acted as counsel for the United Nations, of which approximately 30 per cent involved United Nations Funds and Programmes. As mentioned above (see [reply of the United Nations Office of Legal Affairs to question] 2), the majority arose from complex contractual arrangements between the United Nations and vendors providing logistical support to peacekeeping operations.

World Food Programme

[Original: English]

Over the past years, WFP has scaled up and diversified its operations worldwide. This has resulted in increased engagements with private sector partners and the enhancement and strengthening of the contractual requirements, which in turn brought a consequent increase in the numbers of disputes. However, the settlement methods have consistently involved a preference for amicable negotiations, as explained above. As for the types of disputes, the same consistency can be noted.

World Health Organization

[Original: English]

There is an upward trend in the number of disputes with service providers. The latter is mainly due to the fact that WHO is contracting more and more individuals as external contractors to provide services and specific specialized tasks to WHO.

There is also an increase in disputes with staff members and, consequently, an increase in cases that come before ILOAT.

---

[1] For example, there was an arbitration involving the United Nations Operation in the Congo (ONUC) in the late 1960s (*Starways Limited v. United Nations*, Decision of the arbitrator dated 24 September 1969, *United Nations Juridical Yearbook 1969* (ST/LEG/SER.C/7), pp. 233–234) and a number of arbitrations (one arising from a bidding challenge and another from a lease) during the 1980s.

[2] Report by the Secretary-General on procurement-related arbitration (A/54/458), para. 5.

The number of disputes with other private parties remain generally stable.

In general, the modes of settlement used remain the same, as explained under [reply of WHO to] question 2.

World Intellectual Property Organization

[Original: English]

In relation to staff matters, the number and type of disputes have indeed fluctuated over time. Causes for the fluctuation in the number and type of disputes can be attributed to both internal and external factors.

In terms of internal factors, in general, a reduction in the benefits and entitlements of staff, restructuring of departments and/or a reduction in posts, the fact of having a multi-tiered workforce, and management's zero tolerance of misconduct have the effect of increasing the number of cases with respect to those broad categories.

Organizational culture is also important; a transition between Administrations can result in a temporary decrease in cases, with both the outgoing and incoming executive heads taking fewer challengeable decisions during this time.

Staff/management relations can also influence the number of legal challenges received; the more harmonious the relationship, the fewer cases in general.

In terms of external factors, judgments rendered by [ILOAT] that reject an organization's position can also have an impact on the type and number of legal challenges subsequently received. In addition, the COVID-19 pandemic, which necessitated staff to work at home for extended periods over nearly two years, possibly resulted in a decrease in cases (this could be due to the fact that perhaps fewer decisions were taken at the start of the pandemic, and/or that the number of face-to-face interactions between staff was drastically reduced).

In terms of the mode of settlement at WIPO specifically, there has been no real shift. WIPO has always approached each case by assessing the likelihood of success in engaging in a particular type of dispute resolution. This approach is reassessed throughout the life cycle of a case.

World Trade Organization

[Original: English]

One trend observed is that relationships with contractors have become increasingly more complex, resulting in a greater need for more sophisticated agreements. In turn, this has led to a greater availability and use of different methods of dispute settlement.

6. Question 6 – Do you have suggestions for improving the methods of dispute settlement (that you have used in practice)?

Asian International Arbitration Centre

[Original: English]

There is insufficient data to provide suggestions to improve the methods of dispute settlement from treaties/contracts involving AIAC per se. From the viewpoint of an administrative authority, the cases administered by AIAC evince that parties incorporate third-party dispute settlement i.e. multi-tiered dispute resolution clauses which allow the parties to show their best efforts in adhering to the pre-conditions of a third-party dispute resolution before proceeding to arbitration or litigation, which

are more generally more binding in its form. Oftentimes, parties are inclined to a private negotiation/conciliation process before the conclusion of a matter.

In this sense, a suggestion to improve methods of dispute settlement is to consider specialization as a key component in the efficiency of handling cases through the establishment of specialist tribunals. On the international level, AIAC is already an alternative hearing venue for specialized tribunals formed under the Court of Arbitration for Sports, the introduction of the AIAC i-Arbitration Rules which governs disputes based on Shariah-guided principles, and AIAC also acts as the Kuala Lumpur office for disputes relating to generic top-level domain names (gTLDs) approved by the Internet Corporation for Assigned Names and Numbers. Through its experience administering cases, AIAC has witnessed the positive impact that specialized members in arbitration panels have had in case handling. In this sense, introducing specialized tribunals composed of experts and with specialized rules would improve dispute settlement.

Closer to home, the introduction of the Construction Industry Payment Adjudication Act 2012 (CIPAA 2012) empowers AIAC to administer and appoint specialized members of the construction industry to adjudicate construction disputes within the statutory timeframe of 106 working days from the service of the Payment Claim. AIAC also introduced the AIAC Adjudication Rules and Procedure to meet the requirements of adjudication procedures as set out in CIPAA 2012.

Common Fund for Commodities

[Original: English]

Make arbitration cheaper and make it easier to enforce judgements in third countries.

Eurasian Group on Combating Money Laundering and Financing of Terrorism

[Original: English]

EAG has not got such proposals as it was not involved in any dispute settlement.

Food and Agriculture Organization of the United Nations

[Original: English]

While FAO does not have any particular suggestions, FAO would observe that the contractual dispute resolution clause for non-staff personnel provides for arbitration according to the UNCITRAL rules. In the view of FAO, this may not be an effective dispute resolution method for labour disputes with individuals, as it is burdensome, both financially and procedurally. FAO understands that this is an area currently under review, in consultation with other United Nations system agencies.

Organization of African, Caribbean and Pacific States

[Original: English]

In cases when alternative dispute resolution procedures are not successful, it is often due to the parties unwilling to understand the other party’s position and to reach an amicable solution or compromise.

Organisation for the Prohibition of Chemical Weapons

[Original: English]

No.

Permanent Court of Arbitration

[Original: English]

PCA has administered a number of arbitrations arising under contracts between international organizations and private parties. The parties to some of these matters (in particular, those arising in the employment sector) are cost-sensitive. These arbitrations could benefit from procedural mechanisms to control cost and the duration of the arbitration. The mechanisms that PCA has observed used in these cases include, but are not limited to (*i*) the appointment of a sole arbitrator rather than a panel; (*ii*) dispensing with a hearing, and having a decision made on the basis of written submissions alone; (*iii*) dispensing with document production procedures; (*iv*) conducting meetings and/or hearings by videoconference rather than in person; (*v*) choosing an experienced appointing authority for arbitrators; (*vi*) using expedited appointment procedures for arbitrators (for instance, dispensing with a list procedure for the appointment of a sole arbitrator in favour of a direct appointment by the appointing authority); (*vii*) using a registry that can help reduce the time spent by the tribunal on routine tasks; and (*viii*) using an electronic file only, without paper copies. Some of these mechanisms have been incorporated in the arbitration clauses to which PCA is a party, as described above [in the reply of PCA to question 2].

United Nations Conference on Trade and Development

[Original: English]

[M]ore streamlined arbitration procedures (that are less costly and less onerous) for disputes with individual contractors/consultants.

United Nations Development Programme

[Original: English]

No.

United Nations Framework Convention on Climate Change

[Original: English]

Amicable settlement, through negotiations is very flexible. One can adapt, as one moves forward.

United Nations Office for Project Services

[Original: English]

UNOPS has identified room for improvement in the resolution of personnel disputes between UNOPS and personnel that are not United Nations staff (in particular personnel retained under Individual Contractor Agreements) who do not have access to the United Nations internal legal justice system. For a long time, the only available formal dispute resolution process has been *ad hoc* arbitration under the UNCITRAL Arbitration Rules which usually entails a very lengthy process associated with significant costs.

To tackle some of these challenges, UNOPS has recently started to introduce changes to the dispute settlement process involving individual contractors, among other things, including the following: (1) individual contractors are now entitled to request a management evaluation in case of non-disciplinary decision before initiating arbitration to challenge an administrative decision; (2) more emphasis is placed on pursuing informal dispute resolution such as mediation as a prerequisite for initiating arbitration proceedings; and (3) UNOPS is in the process of introducing a

revised arbitration clause in its Individual Contractor Agreements that provide for a faster and more cost-effective process under the UNCITRAL Expedited Arbitration Rules. UNOPS started implementing these changes for this advanced dispute resolution process for Individual Contractors in September 2022.

In addition, UNOPS sees advantages in giving more attention to resolving commercial disputes through consensual dispute resolution processes such as mediation and conciliation. In practice, commercial disputes within the United Nations system seem to be resolved only through negotiations (without the involvement of a neutral third party such as a mediator or a conciliator) and arbitration. However, in certain cases there may be an advantage to resorting to mediation and conciliation.

United Nations Office of Legal Affairs

[Original: English]

In response to requests by the General Assembly to improve the remedies available to non-staff personnel,[1] the Office of Legal Affairs has been working on simplifying and streamlining the dispute resolution procedure available to consultants and individual contractors, based on the UNCITRAL Expedited Arbitration Rules recommended by the General Assembly in 2021,[2] with the aim of making the process less time-consuming and costly.[3] The Office of Legal Affairs notes that the engagement of the Permanent Court of Arbitration, as an independent and neutral entity to provide support services in arbitrations involving the United Nations and consultants and individual contractors, is also under consideration.[4]

World Food Programme

[Original: English]

WFP has strengthened its policies to prevent disputes, for example, it established the Community Feedback Mechanism (see [reply of WFP to] question 10). In addition, WFP has been working actively with FAO in reviewing the internal appeal process towards increased effectiveness, including timeliness, and increased informal amicable resolution.

Noting that amicable negotiations are usually the preferred way to settle disputes, the importance of developing and strengthening negotiation skills of personnel handling relationships with WFP counterparties (for example, by relevant trainings) is emphasized.

World Health Organization

[Original: English]

In [his] report to the […] General Assembly [at its sixty-seventh session] on the administration of justice at the United Nations (A/67/265), the Secretary-General submitted a proposal for implementing a mechanism for expedited arbitration procedures for consultants and individual contractors. In General Assembly

[1] General Assembly resolution 73/276 of 22 December 2018.

[2] General Assembly resolution 76/108 of 9 December 2021. See Report of the United Nations Commission on International Trade Law on the work of its fifty-fourth session (28 June–16 July 2021), *Official Records of the General Assembly, Seventy-Sixth Session, Supplement No. 17* (A/76/17), para. 189, and annex IV containing the text of the Expedited Arbitration Rules.

[3] Report of the Secretary-General on administration of justice at the United Nations (A/77/156), para. 114.

[4] *Ibid*., paras. 115–116.

resolution 67/241 [of 24 December 2012], the Assembly took note of the proposal, and it is the understanding of WHO that no further action has been taken since then.

WHO considers that it may be worth revisiting the option of putting in place within the United Nations system an expedited arbitration process for consultants and individual contractors.

World Intellectual Property Organization

[Original: English]

As noted above, WIPO has put in place a fair, independent, transparent, and robust internal justice mechanism, which includes formal and informal conflict resolution mechanisms, with a large number of trained and experienced actors. The current system largely stems from a comprehensive reform undertaken in 2014 and at this stage, no amendment, or adaptation, is deemed necessary.

World Trade Organization

[Original: English]

Creating a standardized set of arbitration rules for resolving conflicts between international organizations and private parties (in particular contractors) would be beneficial. Additionally, an exclusive forum focused on conciliation and arbitration for international organizations could be established.

7. Question 7 – Are there types of disputes that remain outside the scope of available dispute settlement methods?

Common Fund for Commodities

[Original: English]

No.

Eurasian Group on Combating Money Laundering and Financing of Terrorism

[Original: English]

None.

Food and Agriculture Organization of the United Nations

[Original: English]

There may be claims by beneficiaries with whom FAO has no contractual relationship that could give rise to disputes that are outside the scope of available dispute mechanisms. For instance, FAO enters into agreements with private parties for the implementation of voucher and cash transfer schemes providing aid to beneficiaries. Complaints by beneficiaries where their expectations are not met fall outside the scope of available dispute settlement methods. In such instances, FAO resorts to indirect, practical, non-legal mechanisms that allow it to consider such complaints and, where appropriate, take action in accordance with its internal rules and United Nations system best practices.

Organization of African, Caribbean and Pacific States

[Original: English]

In practice, there are no disputes outside the scope of the available dispute settlement methods.

Organisation for the Prohibition of Chemical Weapons

[Original: English]

No.

Permanent Court of Arbitration

[Original: English]

PCA is not limited in respect of the subject matter or procedural framework under which it may administer disputes involving international organizations. For example, as described above [under the reply of PCA to question 2], PCA has acted as registry to the *sui generis* review panel mechanism established under the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. In its practice as registry, PCA has observed gaps where appropriate dispute resolution methods have not been established. However, PCA has not observed any types of disputes involving international organizations that cannot be accommodated within the scope of available dispute settlement methods either in the cases it administers or in its own practice as an international organization. In this regard, PCA has significant experience advising other international organizations regarding dispute settlement options and design.

United Nations Conference on Trade and Development

[Original: English]

No.

United Nations Development Programme

[Original: English]

Interns are not covered by any dispute resolution mechanism. Procurement (bid) protests are also outside the scope of dispute settlement methods.

United Nations Framework Convention on Climate Change

[Original: English]

UNFCC has not encountered such disputes.

United Nations Office for Project Services

[Original: English]

UNOPS is not aware of disputes that do not fall within the scope of available dispute settlement methods.

United Nations Office of Legal Affairs

[Original: English]

A response to this question will, in the first instance, depend on the definition of “available dispute settlement methods”. A broad definition, such as that provisionally adopted by the Drafting Committee of the International Law Commission, would include “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of resolving disputes”. [1] Any dispute involving international

[1] Settlement of international disputes to which international organizations are parties: Titles and texts of draft guidelines 1 and 2 provisionally adopted by the Drafting Committee

organizations will involve considerable and extended efforts to resolve them by negotiations and possibly mediation and conciliation, prior to engaging in more formal processes, such as arbitration or referral to the International Court of Justice, as and where applicable. Most dispute settlement methods referred to will not have limitations in scope.

Dispute resolution under article VIII, Section 29 (*a*), of the [Convention on the Privileges and Immunities of the United Nations] is expressly limited to disputes arising out of contracts and other disputes of a private law character.

World Food Programme

[Original: English]

For contractual disputes, all contracts concluded by WFP identify a dispute settlement method either in a provision of the contract or by reference to the relevant WFP policy, regulation or rule.

There is no predetermined or specified method for the settlement of disputes other than those arising from contracts (that is, disputes with third parties). Such disputes are addressed in [reply of WFP to] question 10 below.

World Health Organization

[Original: English]

N/A.

World Intellectual Property Organization

[Original: English]

No.

World Trade Organization

[Original: English]

Complex political disputes are outside the scope of available dispute settlement methods.

8. Question 8 – Does your organization have a duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character under the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, or an equivalent treaty? How in practice has your organization interpreted and applied the relevant provisions?

Common Fund for Commodities

[Original: English]

CFC does not fall under the scope of [these] treaties.

Eurasian Group on Combating Money Laundering and Financing of Terrorism

[Original: English]

The EAG statutory documents do not contain provisions on mandatory determination of the modes of settlement of disputes arising out of contracts or other

(A/CN.4/L.983), draft guideline 2 (*c*).

disputes of private law character. However, according to the established practice, such provisions are provided for in every contract of a private-law character concluded by the secretariat with the residents of the country of its residence.

Food and Agriculture Organization of the United Nations

[Original: English]

FAO has a duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of private character to which it is a party, pursuant to article IX, section 31, of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies. In this connection, FAO ensures that agreements entered into contain dispute settlement clauses.

Where FAO furnishes technical assistance to a Government at its request in the exercise of its constitutional mandate, it negotiates additional safeguards in the agreement it enters into with the Government. These safeguards include, in particular, the Government: (*a*) accepting responsibility for dealing with any claims that may be brought by third parties against FAO, its officials, experts on mission or other persons performing services on its behalf; and (*b*) agreeing to hold FAO harmless in respect of any such claims and liabilities, except where it is mutually agreed that such claims and liabilities arise from gross negligence or misconduct of FAO, its officials, advisors or persons performing services on its behalf.

In respect of labour disputes, staff members and consultants may use the appeals procedure (see [reply of FAO to] question 2 above). In the case of non-staff personnel, disputes may be resolved through mutual agreement and arbitration.

Organization of African, Caribbean and Pacific States

[Original: English]

These provisions do not apply to OACPS.

Organisation for the Prohibition of Chemical Weapons

[Original: English]

OPCW is an independent, autonomous United Nations related organization.[1] As a result of its status, the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies do not apply to OPCW. However, OPCW is required to make provision for appropriate modes of settlement pursuant to article 26 (1) of its Headquarters Agreement with its Host Country.

As per standard practice, contracts and agreements to be entered into by OPCW or the OPCW Technical Secretariat are submitted to the Office of the Legal Adviser (the "LAO") for review. LAO ensures that such contracts and agreements contain appropriate dispute settlement clauses. LAO routinely reviews and updates the OPCW [General Terms and Conditions for Goods and for Service] and the dispute settlement clauses contained therein if necessary.

[1] OPCW is recognized by the United Nations as an "independent, autonomous international organization". See the Relationship Agreement between the OPCW and the United Nations in the annex to EC-MXI/DEC.1, dated 1 September 2000 [Agreement concerning the Relationship between the United Nations and the Organisation for the Prohibition of Chemical Weapons (New York, 17 October 2000), United Nations, *Treaty Series*, vol. 2966, No. 1240, p. 312].

Permanent Court of Arbitration

[Original: English]

Yes. The Agreement Concerning the Headquarters of the Permanent Court of Arbitration states in article 16 (1) that:

The PCA shall make provisions for appropriate methods of settlement of:

(*a*) disputes arising out of contracts and disputes of a private law character to which the PCA is party; and

(*b*) disputes involving an Official of the PCA who, by reason of his official position, enjoys immunity, if such immunity has not been waived by the PCA.

PCA has applied the above provision by putting in place the dispute settlement mechanisms described [under the reply of PCA to question 2].

United Nations Conference on Trade and Development

[Original: English]

Yes. UNCTAD includes standard dispute settlement clauses in its agreements and project documents.

United Nations Development Programme

[Original: English]

UNDP standard contracts reference UNCITRAL as well as United Nations privileges and immunities under the 1946 Convention on the Privilege and Immunities of the United Nations.

United Nations Framework Convention on Climate Change

[Original: English]

Yes, UNFCCC has a provision on settlement of disputes in all binding legal instruments the secretariat concludes.

United Nations Office for Project Services

[Original: English]

Yes. UNOPS has an obligation under article II, section 29, of the Convention on the Privileges and Immunities of the United Nations to make provisions for appropriate modes of settlement of disputes arising out of contracts of private law character to which the United Nations is a party. This obligation derives from the fact that UNOPS enjoys immunity from legal process and cannot be sued before State courts.

To comply with its obligation under article II, section 29, of the Convention on the Privileges and Immunities of the United Nations, UNOPS usually includes an arbitration clause in all its commercial contracts with external parties, as well as in its Individual Contractor Agreements. Therefore, UNOPS counterparties are usually able to file their claims against UNOPS before an arbitral tribunal.

United Nations Office of Legal Affairs

[Original: English]

See [reply of the United Nations Office of Legal Affairs to] to question 2 above.

World Food Programme

[Original: English]

Yes. As an autonomous joint subsidiary programme of FAO, both the 1946 Convention on the Privileges and Immunities of the United Nations ("1946 Convention") and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies ("1947 Convention") are applicable to WFP. Accordingly, WFP has a duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes or private character to which WFP is a party (see 1946 Convention, section 29 (*a*)); and 1947 Convention, section 31 (*b*)).

WFP has discharged this duty by identifying dispute settlement modes (or methods) in its agreements and contracts with counterparties. Given its immunity from legal process, WFP does not, in principle, accept any modes of dispute settlement involving judicial review or other review by a national court or authorities. Thus, WFP dispute settlement modes are negotiation, conciliation and arbitration typically in accordance with the UNCITRAL Conciliation and Arbitration Rules. As described in [reply of WFP to] question 2 above, the specific mode used for disputes where WFP is a party depends on the nature of the counterparty.

When the dispute involves a third party, in the absence of a contract identifying a specific dispute settlement method, WFP may collaborate with the third party to identify an appropriate dispute settlement method among negotiation, mediation, conciliation and arbitration (see [reply of WFP to] question 10 below).

World Health Organization

[Original: English]

Under section 31 of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, WHO shall make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of private character to which WHO is a party.

WHO has interpreted such a provision as meaning that it should provide dispute resolution mechanisms for disputes regarding its staff members, other parties with which it enters into a contractual relationship, as well as in relation to alleged tortious acts. WHO considers that disputes of a constitutional nature related to the exercise of the WHO mandate, operations and activities do not fall under section 31 of the 1947 Convention.

For the modes of settlement of disputes put in place as a result of such provision, please refer to [reply of WHO to] question 2.

World Intellectual Property Organization

[Original: English]

Yes. As a specialized agency of the United Nations, WIPO has the duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character pursuant to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (art. IX, section 31).

In practice, this requirement is met by WIPO through the systematic inclusion in contractual arrangements with third parties – other than with its staff members – of a dispute settlement clause requiring the parties to refer any dispute to arbitration in accordance with the UNCITRAL Arbitration Rules.

World Trade Organization

[Original: English]

Yes, under its Headquarter Agreement, WTO has a duty to make provision for appropriate modes of settlement of private disputes, which is comparable to article IX of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies. WTO has an internal justice system and recognizes the jurisdiction of ILOAT. Where appropriate, WTO relies on contractual dispute settlement clauses, which include arbitration under UNCITRAL rules.

9. Question 9 – Are there standard/model clauses concerning dispute settlement in your treaty and/or contractual practice? Please provide representative examples.

Common Fund for Commodities

[Original: English]

In CFC standard agreements with private parties the CFC standard dispute settlement clause reads as follows:

> This Agreement, including any non-contractual disputes or claims, shall be governed by and construed in accordance with Dutch law.
>
> Any disputes arising out of or in connection with this Agreement shall [be referred to and finally resolved by arbitration (in the English language) in accordance with the UNCITRAL Arbitration Rules. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration]/ [submitted to the competent court in Amsterdam, the Netherlands].
>
> [The number of arbitrators shall be one and the place of arbitration shall be The Hague, The Netherlands].

Eurasian Group on Combating Money Laundering and Financing of Terrorism

[Original: English]

Treaties (contracts) which are concluded by the secretariat usually include the following standard/model clauses concerning dispute settlement:

> For failure to perform or improper performance of their obligations under this Agreement, the Parties shall be liable in accordance with the applicable laws of the Russian Federation. In case of disputes between the Customer and the Contractor, the Parties will take all measures to resolve them through negotiations between themselves. In case of failure to resolve disputes through negotiations, the dispute shall be considered in the Arbitration Court of Moscow.

Food and Agriculture Organization of the United Nations

[Original: English]

The Appendix of Volume II, Part O of the Basics Texts of FAO provides that:

> [e]ach convention and agreement [concluded under Articles XIV and XV of the Constitution of FAO] shall contain a suitable provision regarding its interpretation and settlement of disputes. Among alternative procedures for settlement of disputes are conciliation, arbitration, or reference to the International Court of Justice. The nature of the provision for settlement of disputes should be determined in the individual convention or agreement by the character and objective of the particular instrument involved.

As an example, the International Plant Protection Convention,[1] which was concluded under Article XIV of the FAO Constitution and came into force on 3 April 1952, contains the following dispute settlement provision:

ARTICLE XIII

Settlement of disputes

1. If there is any dispute regarding the interpretation or application of this Convention, or if a contracting party considers that any action by another contracting party is in conflict with the obligations of the latter under Articles V and VII of this Convention, especially regarding the basis of prohibiting or restricting the imports of plants, plant products or other regulated articles coming from its territories, the contracting parties concerned shall consult among themselves as soon as possible with a view to resolving the dispute.

2. If the dispute cannot be resolved by the means referred to in paragraph 1, the contracting party or parties concerned may request the Director-General of FAO to appoint a committee of experts to consider the question in dispute, in accordance with rules and procedures that may be established by the Commission.

3. This Committee shall include representatives designated by each contracting party concerned. The Committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the contracting parties concerned. The Committee shall prepare a report on the technical aspects of the dispute for the purpose of seeking its resolution. The preparation of the report and its approval shall be according to rules and procedures established by the Commission, and it shall be transmitted by the Director-General to the contracting parties concerned. The report may also be submitted, upon its request, to the competent body of the international organization responsible for resolving trade disputes.

4. The contracting parties agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the contracting parties concerned of the matter out of which the disagreement arose.

5. The contracting parties concerned shall share the expenses of the experts.

6. The provisions of this Article shall be complementary to and not in derogation of the dispute settlement procedures provided for in other international agreements dealing with trade matters.

Agreements between FAO and international organizations/States contain the following standard dispute settlement clause:

> Any dispute between the Parties concerning the interpretation and execution of this [name of agreement], or any document or arrangement relating thereto, shall be settled by negotiation between the Parties. Any differences that may not be so settled shall be brought to the attention of the Executive Heads of the two institutions for final resolution.

Agreements between FAO and private parties, including procurement contracts/instruments, contain the following the standard dispute settlement clause:

[1] International Plant Protection Convention (Rome, 17 November 1997), United Nations, *Treaty Series*, vol. 2367, No. 1963, p. 223.]

1. Any dispute between the Parties concerning the interpretation and the execution of this [name of agreement], will be settled by negotiation or, if not settled by negotiation between the Parties or by another agreed mode of settlement shall, at the request of either Party, be submitted to one (1) conciliator. Should the Parties fail to reach agreement on the name of a sole conciliator, each Party shall appoint one (1) conciliator. The conciliation shall be carried out in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law ("UNCITRAL"), as at present in force. Article 16 of the UNCITRAL Conciliation Rules does not apply.

2. Any dispute between the Parties concerning the interpretation and the execution of this [name of agreement], that is unresolved after conciliation shall, at the request of either Party be settled by arbitration in accordance with the UNCITRAL Arbitration Rules, as at present in force.

3. The conciliation and the arbitration proceedings shall be conducted in English and the place of arbitration shall be Rome. The Parties may request conciliation while the [name of agreement], is in force or within a period not to exceed twelve (12) months after the expiry or the termination of the [name of agreement]. The Parties may request arbitration not later than ninety (90) days after the termination of the conciliation proceedings.

4. Decisions of the arbitral tribunal shall be final and binding on the Parties and the arbitral tribunal shall have no authority to award punitive damages.

The contracts between FAO and non-staff personnel contain the following standard clause:

Any dispute arising out of the interpretation or execution of this agreement shall be settled by mutual agreement between the parties. If the parties are unable to reach an agreement on any question in dispute or a mode of settlement other than arbitration, either party shall have the right to request arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as at present in force. The parties agree to be bound by any arbitration award rendered in accordance with this provision as the final adjudication of any dispute. Any request for arbitration must be lodged within 90 days from the date of expiration or termination of the agreement.

Organization of African, Caribbean and Pacific States

[Original: English]

Yes, article 33 of the Georgetown Agreement, which governs OACPS, states that "[m]ember States shall endeavour peacefully to resolve all disputes concerning the interpretation or application of this Agreement and other instruments set up under OACPS in a timely manner, through dialogue, consultation, and negotiation in keeping with Article 33 (1) of the Charter of the United Nations."

Also, when recruiting external consultants, the contract contains a standard clause on dispute avoidance and settlement, which means that the first stage in settling a dispute is through consultation. If consultation fails, mediation is used as a second stage to resolve the issue and if that does not succeed then the parties will request for arbitration.

Organisation for the Prohibition of Chemical Weapons

[Original: English]

The OPCW General Terms and Conditions for Goods and for Services include model dispute settlement clauses which refer any dispute to conciliation and arbitration in accordance with the applicable UNCITRAL rules. The said model clauses are as follows:

> The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Without prejudice to the privileges and immunities of [OPCW], where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law ("UNCITRAL"), then in effect, or according to such other procedure as may be agreed between the Parties in writing.
>
> Any dispute, controversy or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof that remains unresolved within sixty (60) days after receipt by one Party of the other Party's request for amicable settlement shall, at the request of either Party, be referred to arbitration in accordance with the UNCITRAL Arbitration Rules then in effect. The number of arbitrators shall be one. The place of arbitration shall be the Permanent Court of Arbitration, The Hague, the Netherlands. In light of the privileges and immunities of the OPCW, references in the UNCITRAL Arbitration Rules to the place of arbitration shall connote only the actual location for the arbitral proceedings but shall not mean the "seat" or "juridical seat" or "juridical place" for such proceedings. The language of the arbitration shall be English. The decisions of the arbitrator shall be based on general principles of international commercial law. The arbitrator shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any protective measures be taken with respect to the goods, the Services or any other property or any confidential information provided under the Contract, as appropriate, in accordance with the relevant UNCITRAL Arbitration Rules. The arbitrator shall have no authority to award punitive damages. Unless otherwise expressly provided in the Contract, the arbitrator shall have no authority to award interest in excess of the United States Federal Reserve Bank of New York's Secured Overnight Financing Rate ("SOFR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim.

Permanent Court of Arbitration

[Original: English]

In its contracts with other parties, PCA has often used the following arbitration clause:

> The Parties agree that any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules 2010:
>
> (*a*) The appointing authority shall be the Netherlands Arbitration Institute;
>
> (*b*) The number of arbitrators shall be one;

(*c*) The place of arbitration shall be The Hague, the Netherlands;

(*d*) The language to be used in the arbitral proceedings shall be English;

(*e*) The applicable law shall be the law of the State of New York, United States of America; and

(*f*) The arbitrator may charge fees at an hourly rate for his or her work on the case. Those fees shall be capped at a maximum of EUR 5,000.[1]

PCA uses a model host country agreement as a starting point for treaty-level negotiations with its Contracting Parties, which contains the following dispute settlement clause:

Article 15 – Dispute Settlement

(1) Any dispute among the Parties to the present Agreement that is not settled by negotiation shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States (the "Rules"), as in force on the date of signature of this Agreement. The number of arbitrators shall be one. The appointing authority shall be the President of the International Court of Justice.

(2) In any such arbitration proceedings, the registry, archive, and secretariat services of the PCA, referred to in Article 1, paragraph 3, and Article 25, paragraph 3, of the Rules, will not be available, and the PCA shall not be empowered to request, hold, or disburse deposits of costs as provided for in Article 41, paragraph 1, of the Rules.

In its practice as appointing authority and as an institution administering disputes involving international organizations, PCA has come across many standard dispute resolution clauses covering various kinds of disputes with international organizations. Some representative examples are set out below.

Section 15 of the Staff Regulations of the Energy Community[2] states:

Dispute Settlement

Any dispute between the Employer and the Employee shall be settled by a tribunal composed of a single arbitrator appointed by the Secretary General of the Permanent Court of Arbitration, Peace Palace, Carnegieplein 2, 2517 KJ The Hague, The Netherlands, in accordance with the relevant Optional Rules for Arbitration involving international organizations and private parties. The tribunal shall decide a dispute in accordance with these Staff Regulations. Matters concerning the interpretation of the Treaty establishing the Energy Community and its appendices shall not be within the competence of the tribunal.

Article 38.2 of the Staff Regulations and Rules of the International Commission for the Conservation of Atlantic Tuna[3] states that:

A staff member who:

[1] The terms of this arbitration clause have sometimes varied, and it is currently in the process of being revised. It also bears noting that, although counter to best practices observed for other international organizations, PCA cannot propose to serve as appointing authority or registry for arbitrations in which it is involved as a party.

[2] https://www.energy-community.org/dam/jcr:cc5c53fa-2e7e-4e01-a562-db5eb812c07c/Staff_regulations.pdf.

[3] https://docs.pca-cpa.org/2016/02/248ae16d-staffrules.pdf.

(i) considers that they have been subjected to discriminatory or harassing decisions or attitudes; or

(ii) wishes to request a review of an administrative decision other than a disciplinary measure,

may make a formal complaint for settlement of the conflict in accordance with the following scheme of appeals:

1. Appeal at first instance to an internal body of the Secretariat, which shall be composed of an odd number of members drawn equally from the different departments of the Secretariat and shall be chaired by the STACFAD [Standing Committee on Finance and Administration] Chair. The procedure for constitution of this body, the potential reasons for abstention and recusal of its members, the length of the appointment, and all other procedural matters shall be regulated and developed in a specific document.

2. In the event of disagreement with the decision taken by the internal body set up to resolve the complaint at first instance, an appeal may be lodged at second instance before the Permanent Court of Arbitration (PCA) based in The Hague (The Netherlands). The procedure is regulated in the PCA Arbitration Rules.[4]

Section 17 of the United Nations Relief and Works Agency for Palestine Refugees in the Near East General Conditions of Contract for Provision of Goods Only[5] states:

17.1 AMICABLE SETTLEMENT: The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Where the Parties wish to seek assistance of a neutral third person in their attempt to reach an amicable settlement in a process of conciliation or mediation, such process shall take place in accordance with the Optional Conciliation Rules of the Permanent Court of Arbitration in force at the date of commencement of conciliation or mediation, as the case may be, or according to such other procedure as may be agreed between the Parties in writing.

17.2 ARBITRATION: Any dispute, controversy, or claim between the Parties arising out of or relating to the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 17.1 above within sixty (60) days after receipt by one Party of the other Party's written request for conciliation or mediation, shall be settled by arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration between International Organizations and Private Parties in force on the date of this Contract (the "PCA Arbitration Rules"). The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The appointing authority shall be designated by the Secretary-General of the Permanent Court of Arbitration following a written request submitted by either Party. The number of arbitrators shall be three, unless the Parties, in the interest of economy of proceedings, agree that there shall be one arbitrator. The place of arbitration shall be Amman, Jordan. The language to be used in the arbitral proceedings shall be English. The arbitrators must be fluent in that language. The arbitral tribunal shall be empowered to take any measures it deems appropriate, including without limitation, ordering the return or destruction of goods or any

[4] PCA understands this to be a reference to the PCA Arbitration Rules 2012. See https://docs.pca-cpa.org/2015/11/PCA-Arbitration-Rules-2012.pdf.

[5] https://www.unrwa.org/sites/default/files/annex_ii_-_general_conditions_of_contract_for_procurement.doc#:~:text=If%20the%20Contract%20specifies%20that,constitute%20acceptance%20of%20the%20goods.

property, whether tangible or intangible, or of any confidential information provided under the Contract, ordering the termination of the Contract, or ordering that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to the PCA Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

Further representative examples of standard/model clauses concerning dispute resolution in treaties or contracts that may refer to PCA are available on the PCA website under "Model contracts and agreements".[6] Among those model contracts and agreements which specifically involve international organizations are the following:

(*a*) European Commission Model Grant Agreement, 2019;[7]

(*b*) Asian Infrastructure Investment Bank General Conditions for Sovereign-backed Loans, 2016;[8]

(*c*) The Green Climate Fund Template for the Bilateral Agreement on Privileges and Immunities, 2015;[9]

(*d*) NATO Support and Procurement Agency General Provisions for Fixed Price Contracts (Materiel), 2015;[10]

(*e*) General Conditions Applicable to European Union Contribution Agreements with International Organisations for Humanitarian Aid Actions, 2013;[11]

(*f*) General Conditions applicable to Loan, Guarantee and Grant Agreements of the African Development Bank and the African Development Fund, 2009;[12]

(*g*) Energy Charter Secretariat Model Intergovernmental and Host Government Agreements for Cross-Border Electricity Projects, 2008;[13]

(*h*) International Emissions Trade Association Code of CDM [Clean Development Mechanism] Terms, 2006.[14]

PCA has also come across many dispute resolution provisions in a variety of instruments involving international organizations that appear to have been concluded

[6] https://pca-cpa.org/en/resources/instruments-referring-to-the-pca/.
[7] https://docs.pca-cpa.org/2019/07/EC-Model-Grant-Agreement-2019.pdf.
[8] https://docs.pca-cpa.org/2016/02/Asian-Infrastructure-Investment-Bank-General-Conditions-for-Sovereign-backed-Loans.pdf.
[9] https://docs.pca-cpa.org/2019/07/GCF_B.10_12_-_Template_for_the_Bilateral_Agreement_on_Privileges_and_Immunities.pdf.
[10] https://docs.pca-cpa.org/2019/07/GP_FP_Materiel.pdf.
[11] https://docs.pca-cpa.org/2019/07/General-Conditions-Applicable-to-EU-Contribution-Agreements-with-IOs-for-Humanitarian-Aid-Actions-2013.pdf.
[12] https://docs.pca-cpa.org/2016/02/African-Development-Bank-Fund-General-Conditions-applicable-to-Loan-Guarantee-and-Grant-Agreements-2009-Art-10.04.pdf.
[13] https://docs.pca-cpa.org/2019/07/Model-Intergovernmental-Agreement-on-Cross-Border-Electricity-Projects-2008.pdf.
[14] https://docs.pca-cpa.org/2016/02/International-Emission-Trading-Association-Code-of-CDM-Terms-2006.pdf.

on the basis of standard/model clauses, even if it such standard/model clauses are not publicly available. Representative examples may be found on the PCA website.[15]

United Nations Conference on Trade and Development

[Original: English]

Example of a dispute settlement clause:

> The Parties shall use their best efforts to amicably settle any dispute, controversy or claim arising out of this [Memorandum of Understanding] or the breach, termination or invalidity thereof.
>
> Any dispute, controversy, or claim between the Parties arising out of this [Memorandum of Understanding] or the breach, termination, or invalidity thereof, unless settled amicably under paragraph 1 of this Article within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under this MoU, order the termination of this [Memorandum of Understanding], or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under this [Memorandum of Understanding], as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim measures") and Article 34 ("Form and effect of the award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in this Agreement, the arbitral tribunal shall have no authority to award interest in excess of the Federal Reserve Bank of New York's Secured Overnight Financing Rate then prevailing, and any such interest shall be simple interest only. The arbitral proceedings shall take place in Geneva, Switzerland, provided that, in light of the privileges and immunities of the United Nations, such reference to the place of arbitration shall connote only the physical place of the arbitral proceedings and not the jurisdictional seat of the arbitration. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

United Nations Development Programme

[Original: English]

Please find below the standard settlement of dispute clause in the UNDP General Terms and Conditions for Contracts for Goods and Services:

> Any dispute, controversy, or claim between the Parties arising out of the Contract, or out of the breach, termination or invalidity thereof ("Dispute") shall be finally settled in the manner set out in this Article 25, which shall be binding on the Parties and shall be the exclusive mode of settlement of the Dispute in accordance with Article VIII, Section 29, of the Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15 (1946). **Amicable Settlement**: The Parties shall use their best efforts to amicably settle any Dispute. For that purpose, the Party asserting a claim shall provide to the other

[15] https://pca-cpa.org/en/resources/instruments-referring-to-the-pca/.

Party a detailed description of the Dispute, specifying the relief or remedy sought, together with a copy of the Contract and all relevant supporting documentation ("Notice of Dispute"). Neither Party may refer the Dispute to arbitration, prior to pursuing amicable settlement efforts and prior to the expiry of sixty (60) days from the date of the Notice of Dispute. However, the foregoing shall not preclude a Party to the Contract from referring a Dispute to arbitration if such Party seeks interim measures of protection under the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL Arbitration Rules"). **Arbitration**: Either Party may refer a Dispute that has not been resolved amicably, to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining, subject to the provisions of this Article. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration. The Parties agree that the periods for the intervention of the appointing authority stipulated in Article 8, paragraph 1, and Article 9, paragraphs 2 and 3, of the UNCITRAL Arbitration Rules shall be sixty (60) days. Any agreement between the Parties or decision by the arbitral tribunal as to the place of arbitration or the venue of the proceedings shall mean only the physical location where the arbitral tribunal shall hold in-person meetings, including for its deliberations or hearings, pursuant to Article 18, paragraph 2, of the UNCITRAL Arbitration Rules. Such agreement or decision as to the place of arbitration shall not amount to the determination of a legal seat, shall not entail any submission to any country's law and jurisdiction in connection with the arbitral proceedings and any resulting award(s), and shall not be construed as a waiver, express or implied, of the privileges and immunities of the United Nations, including UNDP. In interpreting the rights and obligations of the Parties under the Contract, the arbitral tribunal shall first apply the terms of the Contract and then apply generally recognized principles of international commercial law. Procedural matters shall be governed by the provisions of this Article 25 and the UNCITRAL Arbitration Rules. Where necessary, the Arbitral Tribunal may seek additional guidance from the generally accepted principles of procedure applied by international tribunals. The arbitral tribunal may exercise the powers envisaged in Article 27, paragraph 3, of the UNCITRAL Arbitration Rules in respect of documents, exhibits or other evidence that (i) the Parties agree are to be produced or (ii) which the arbitral tribunal, in view of the statements of claim and defense and the evidentiary record, considers relevant to the Dispute and material to its outcome. When apportioning costs pursuant to Article 42, paragraph 1, of the UNCITRAL Arbitration Rules, the arbitral tribunal shall consider the reasonableness of document production requests. In accordance with the UNCITRAL Arbitration Rules, the arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services, or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate. Unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award: (1) punitive damages or damages for indirect or consequential losses; (2) interest other than simple interest and only at the Federal Reserve Bank of New York's Secured Overnight Financing Rate prevailing at the time of the award. The arbitral tribunal shall have no authority to award any pre-award interest.

This is the Settlement of Dispute clause in the Standard Basic Assistance Agreement:

(1) Any disputes between the UNDP and the Government arising out of or relating to this Agreement which is not settled by negotiation or other agreed

mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute. (2) Any dispute between the Government and an operational expert arising out of or relating to the conditions of his service with the Government may be referred to the Executing Agency providing the operational expert by either the Government or the operational expert involved, and the Executing Agency concerned shall use its good offices to assist them in arriving at a settlement. If the dispute cannot be settled in accordance with the preceding sentence or by other agreed mode of settlement, the matter shall at the request of either Party be submitted to arbitration following the same provisions as are laid down in paragraph 1 of this Article, except that the arbitrator not appointed by either Party or by the arbitrators of the Parties shall be appointed by the Secretary-General of the Permanent Court of Arbitration.

United Nations Framework Convention on Climate Change

[Original: English]

Yes, in contractual practice. This is the provision UNFCC has in its template for host country agreements:

Any dispute between the Parties arising out of, or relating to this Agreement, which is not settled by negotiation or another agreed mode of settlement, shall, at the request of either Party, be submitted to a Tribunal of three arbitrators. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairperson of the Tribunal. If either Party does not appoint an arbitrator within three months of the other Party having notified the name of its arbitrator, or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint a Chairperson, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the Parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the Parties, and take all decisions by a two-thirds majority. Its decision on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

This is the provision UNFCCC has in its template for Memorandum of Understanding:

Amicable Settlement. The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this MoU or the breach, termination or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the Parties.

Arbitration. Any dispute, controversy or claim between the Parties arising out of this MoU, or the breach, termination or invalidity thereof, unless settled

amicably under Section XX within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

This is the provision from the United Nations General Conditions of Contract, which UNFCCC uses in its commercial contracts:

Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article [XX], above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim measures") and Article 34 ("Form and effect of the award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. Should LIBOR no longer be available, the United States Federal Reserve Bank of New York's Secured Overnight Financing Rate (SOFR) then prevailing shall be used, and any such interest shall be simple interest only. In light of the privileges and immunities of the United Nations, references in the UNCITRAL Arbitration Rules and this provision to the place of arbitration shall connote only the actual location for the arbitral proceedings but shall not mean the "seat" or "juridical seat" or "juridical place" for such proceeding. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

United Nations Office for Project Services

[Original: English]

UNOPS usually uses the dispute settlement clause in the United Nations General Conditions of Contract established by the United Nations Office of Legal Affairs. The current version of this arbitration clause (which is currently being updated) reads as follows:

AMICABLE SETTLEMENT: The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of United Nations Commission on International Trade Law ("UNCITRAL"), or according to such other procedure as may be agreed between the Parties in writing.

ARBITRATION: Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 17.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim measures") and Article 34 ("Form and effect of the award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

United Nations Office of Legal Affairs

[Original: English]

United Nations contracts with private parties:

The United Nations uses a standard dispute settlement clause in both its commercial contracts as well as its contracts with consultants and individual contractors, providing for amicable settlement and *ad hoc* arbitration under the UNCITRAL Arbitration Rules. The United Nations also includes a standard clause on privileges and immunities, which follows the dispute settlement clause.

For contracts with commercial vendors, the United Nations General Conditions of Contracts for the Provision of Goods and Services[1] provide as follows:

17. **SETTLEMENT OF DISPUTES:**

17.1 **AMICABLE SETTLEMENT:** The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ("UNCITRAL"), or according to such other procedure as may be agreed between the Parties in writing.

17.2 **ARBITRATION:** Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 17.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential

[1] Available at https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/general_condition_goods_services.pdf.

information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim measures") and Article 34 ("Form and effect of the award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

18. **PRIVILEGES AND IMMUNITIES:** Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

For contracts with consultants and individual contractors, the United Nations General Conditions of Contracts for the Services of Consultants and Individual Contractors[2] provide as follows:

16. Settlement of disputes

Amicable settlement. The United Nations and the contractor shall use their best efforts to amicably settle any dispute, controversy or claim arising out of the contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (UNCITRAL), or according to such other procedure as may be agreed between the parties in writing.

Arbitration. Any dispute, controversy or claim between the parties arising out of the contract, or the breach, termination or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate then prevailing, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim.

17. Privileges and immunities

Nothing in or relating to the contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

[2] Available at ST/AI/2013/4.

While the model amicable settlement clause provides for the option of conciliation under the UNCITRAL Conciliation Rules (1980),[3] use of that method of dispute settlement is entirely dependent upon the agreement of the parties. As far as the Office of Legal Affairs is aware, that option has been invoked only rarely.[4]

Further, there are certain distinguishing features of international commercial arbitration involving the United Nations, given the Organization's privileges and immunities. In particular, the standard United Nations contract is governed by its own terms and not by any national law, whether substantive or procedural. In this regard, the standard clauses above provide that the arbitral tribunal shall apply general principles of international commercial law in its interpretation of the parties' rights and obligations under the contract (which, depending on the issue, may include the UNIDROIT [International Institute for the Unification of Private Law] Principles of International Commercial Contracts). Further, the United Nations takes the position that its arbitrations are delocalized in nature, without a seat of arbitration that would entail its submission to the jurisdiction of national courts or the application of any local procedural law, which would be inconsistent with the Organization's privileges and immunities.[5]

It should be noted that the above model clauses are currently under revision.

Similarly, where the United Nations enters into separate arbitration agreements (see [reply of the United Nations Office of Legal Affairs to question] 11 below), it typically includes provisions to protect its legitimate interests, depending on the circumstances of the particular case, such as provisions clearly defining and circumscribing the issues to be adjudicated, provisions specifying that the arbitrators are to apply internationally accepted principles of international commercial law rather than the law of a particular national legal system, provisions regulating the scope of discovery that may be ordered by the arbitrators, and provisions preserving the privileges and immunities of the United Nations.[6]

United Nations agreements with Member States or international organizations:

In agreements with Governments of Member States,[7] the United Nations typically includes the following dispute resolution clause (or a similar clause with appropriate adjustments depending on the nature of the agreement):

> Any dispute between the United Nations and the Government relating to the interpretation and application of the present Agreement which is not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairperson. If within thirty (30) days of the request for arbitration either Party has not appointed an arbitrator, or if within fifteen (15) days of the appointment of two

[3] See General Assembly resolution 35/52 of 4 December 1980 recommending their use.

[4] Report by the Secretary-General on procurement-related arbitration (A/54/458), para. 34.

[5] See Report of the United Nations Commission on International Trade Law on the work of its forty-third session (21 June–9 July 2010), *Official Records of the General Assembly, Sixty-Fifth Session, Supplement No. 17* (A/65/17), para. 96, clarifying the practice regarding the seat of arbitration in the context of the drafting of the 2010 UNCITRAL Arbitration Rules.

[6] Note by the Secretariat dated 6 February 2002 on preparation of uniform provisions on written form for arbitration agreements (A/CN.9/WG.II/WP.118), para. 17 (see para. 7 of the excerpted letter from the Director of the General Legal Division of the Office of Legal Affairs dated 23 May 2001).

[7] Where such agreements have been registered and published under Article 102 of the Charter, they are available on the website of the United Nations Treaty Collection (https://treaties.un.org/Pages/AdvanceSearch.aspx?tab=UNTS&clang=_en) and may be retrieved using "Treaty" then "ICJ Clause – appointment" as a search function.

arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure for the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Such agreements may alternatively provide that the parties shall settle any dispute arising from the agreement through amicable negotiation. Whether to include the above-referenced clause or the amicable settlement clause in such agreements depends on the subject matter of the agreements concerned. For example, in a financial contribution agreement with a Member State Government, the amicable settlement clause may be sufficient, if the donor Government would not be involved in the implementation of the funded project.

In the context of peacekeeping operations, the model Memorandum of Understanding between the United Nations and a Member State Government contributing resources to a United Nations peacekeeping operation includes a dispute settlement clause that provides for amicable settlement and arbitration under Article 13:[8]

13.1 [United Nations peacekeeping operation] shall establish a mechanism within the mission to discuss and resolve, amicably by negotiation in a spirit of cooperation, differences arising from the application of this memorandum of understanding. This mechanism shall be comprised of two levels of dispute resolution:

(a) First level: The Director/Chief of Mission Support, in consultation with the Force Commander and the Contingent Commander, will attempt to reach a negotiated settlement of the dispute;

(b) Second level: Should negotiations at the first level not resolve the dispute, a representative of the Permanent Mission of the Member State and the Under-Secretary-General for Operational Support, or his or her representative, shall, at the request of either Party, attempt to reach a negotiated settlement of the dispute.

13.2 Disputes that have not been resolved as provided in paragraph 13.1 above may be submitted to a mutually agreed conciliator or mediator appointed by the President of the International Court of Justice, failing which the dispute may be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the Chair. If, within 30 days of the request for arbitration, either Party has not appointed an arbitrator or if, within 30 days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedures for the arbitration shall be fixed by the arbitrators, and each Party shall bear its own expenses. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute. The arbitrators shall have no authority to award interest or punitive damages.

[8] Letter dated 31 August 2020 from the Secretary-General to the President of the General Assembly, transmitting the 2020 edition of the Manual on Policies and Procedures concerning the Reimbursement and Control of Contingent-Owned Equipment of Troop/Police Contributors Participating in Peacekeeping Missions (A/75/121), pp. 203–204. Report of the Secretary-General on model status-of-forces agreement for peacekeeping operations (A/45/594, p. 13).

With respect to third-party claims of a private law character, paragraph 51 of the Organization's model status-of-forces agreement (Model SOFA) of 1990 provides for the following means of settlement:

> 51. Except as provided in paragraph 53, any dispute or claim of a private law character to which the United Nations peace-keeping operation or any member thereof is a party and over which the courts of [host country/territory] do not have jurisdiction because of any provision of the present Agreement, shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final and binding, unless the Secretary-General of the United Nations and the Government permit an appeal to a tribunal established in accordance with paragraph 53. The awards of the commission shall be notified to the parties and, if against a member of the United Nations peace-keeping operation, the Special Representative/Commander or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

This provision has been included in all of the [status-of-forces agreements (SOFAs)] for the Organization's peacekeeping operations that have been concluded since the Model SOFA was issued.

It has also been included in the [status-of-mission agreements (SOMAs)] that the Organization has concluded for the larger Cluster III special political missions that have been established over the past decade and a half.

The Model SOFA also makes provision for the possibility of appeals from decisions of the standing claims commission and for a means to settle them: see further […] below.

A standing claims commission, as envisaged in the Model SOFA and SOFAs and many SOMAs concluded since that date, has never been established in the practice of United Nations peacekeeping operations or of the Organization's special political missions. It is nevertheless the practice of the Secretary-General to continue to seek to include provision for one in its SOFAs and in the SOMAs for its larger special political missions, and States hosting the Organization's peacekeeping operations and such special political missions continue to agree to this.[9]

[9] In his Report on administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations (A/51/903, paras. 8–11), the Secretary-General explained why the Organization's SOFA continued nevertheless to include the provision from the Model SOFA on standing claims commission: "There is, therefore, no acquired operational experience against which the effectiveness or ineffectiveness of such a procedure can be judged. This may have been the result of a lack of political interest on the part of host States, or because the claimants themselves may have found the existing procedure of local claims review boards [on which, see [reply of OLA to question 2] expeditious, impartial and generally satisfactory. But whatever the reason, the very fact of not

Regarding disputes concerning the terms of employment and conditions of service of locally recruited personnel, paragraph 52 of the Model SOFA provides as follows:

> 52. Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the administrative procedures to be established by the Special Representative/Commander.

Notwithstanding minor adjustments to reflect the structure of the United Nations operation or mission, this provision has been reproduced in all the SOFAs that the Organization has concluded since the issuance of the Model SOFA, with two of these agreements expanding slightly on the provisions of the Model.[10] Likewise, many of the SOMAs that have been concluded over the past decade and a half for the larger of the Organization's Cluster III special political missions have also included this provision.[11]

In so far as concerns disputes between its peacekeeping operations and the Governments of States hosting those operations, the United Nations Model SOFA[12] contains the following provisions for their settlement:

> 53. Any other[13] dispute between the United Nations peace-keeping operation and the Government, and any appeal that both of them agree to allow from the

---

invoking the procedure provided for under the model agreement, in itself, is not an indication that the procedure is inherently unrealistic or ineffective. … [The Secretary-General] is also of the view that the standing claims commission envisaged in article 51 of the model agreement should be maintained, mainly because it provides for a tripartite procedure for the settlement of disputes, in which both the Organization and the claimant are treated on a par. The mechanism also reflects the practice of the Organization in resolving disputes of a private law character under article 29 of the Convention on the Privileges and Immunities of the United Nations. The local claims review boards, just and efficient as they may be, are United Nations bodies, in which the Organization, rightly or wrongly, may be perceived as acting as a judge in its own case. Based on the principle that justice should not only be done but also be seen to be done, a procedure that involves a neutral third party should be retained in the text of the status-of-forces agreement as an option for potential claimants."

[10] The two agreements signed in 2012 by the United Nations and, respectively, the Government of Sudan, and the Government of the Republic of South Sudan concerning the status of the United Nations Interim Security Force for Abyei, both expanded on the provision from paragraph 52 of the Model SOFA and read as follows:

> "56. Disputes concerning the terms of employment and conditions of service of locally recruited staff members shall be settled by the administrative procedures to be established by the Force Commander (Head of UNISFA), in accordance with the relevant provisions of the United Nations Staff Regulations and Rules then in force. Disputes concerning the terms of service of other personnel engaged locally, such as individual contractors, shall be settled in accordance with the terms specified in their contracts, including arbitration where applicable."

[11] UNMIN, UNIOGBIS, UNSMIL, UNPOS. In the case of BNUB and MENUB, the words "in conformity with the principles provided for in General Assembly resolution 62/253 of 24 December 2008" were added at the end. The agreements for several missions (UNSOM, BINUH, UNITAMS) are formulated differently: "All disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled in accordance the regulations and rules of the United Nations." The agreements for the United Nations Mission in Colombia and the United Nations Verification Mission in Colombia provide as follows: "Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the regulations, rules and procedures of the United Nations."

[12] A/45/594, annex.

[13] These two paragraphs appear immediately following paragraphs 51 and 52 relating to modes of settlement for disputes concerning, respectively, (*i*) third party claims and (*ii*) the terms of employment and conditions of service of locally recruited personnel. See above for the relevant two paragraphs.

award of the claims commission established pursuant to paragraph 51 [14] shall, unless otherwise agreed by the parties, be submitted to a tribunal of three Arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, *mutatis mutandis*, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

54. All differences between the United Nations and the Government of [host country/territory] arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention [on the Privileges and Immunities of the United Nations] shall be dealt with in accordance with the procedure of section 30 of the Convention. [i/]

[i/] In case the other part to the present Agreement is a party to the Convention.

These two paragraphs were reproduced verbatim in the SOFAs that were negotiated for those peacekeeping operations that were established in the years immediately following the issuance of the model agreement.[15] The second paragraph was omitted, however, where the host country was not at the time a party to the [Convention on the Privileges and Immunities of the United Nations (the General Convention)].[16]

These two paragraphs were, again, reproduced verbatim[17] in the SOFAs that were negotiated for the peacekeeping operations that were established in the years between 1996 and 2004, but with the omission of the reference to the possibility of appeals from awards of the claims commission.[18] Again, the second of the two paragraphs was omitted where the host country concerned was not party at the time to the General Convention.[19]

In the case of peacekeeping operations established between 2005 and the present date, wording was added to the first sentence of the first of the two paragraphs in order to make submission of a dispute to arbitration dependent on the fact that it had

[14] See above for the wording of paragraph 51.

[15] UNAMIR, UNMIH (subsequently applied *mutatis mutandis* to MIPONUH, UNTMIH and UNSMIH), UNPREDEP, UNAVEM III (subsequently applied *mutatis mutandis* to MONUA) and UNCRO (subsequently extended to include UNTAES). For historical reasons, the two paragraphs were also included many years later in the agreement with Cyprus for UNIFIL. The SOFA for UNTAC dealt with possible appeals from decisions of the claims commission somewhat differently, as follows:

> 48. Any appeal that UNTAC and [the Supreme National Council of Cambodia] agree to allow from the award of the claims commission established pursuant to paragraph 47 shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, mutatis mutandis, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

[16] ONUMOZ. The second paragraph was also omitted from the agreement for UNPROFOR with Bosnia and Herzegovina.

[17] Or with minor changes in wording (the omission of the word “other” from the first sentence of the first of the two paragraphs; or with the phrase “any other dispute” changed to “all other disputes”).

[18] MINURCA, MINURSO (Algeria and Morocco), UNAMSIL, UNMEE (Ethiopia), UNMISET (also applied *mutatis mutandis* to UNOTIL and UNMIT), UNMIL, MONUC (now MONUSCO; also applied *mutatis mutandis* to ONUB military and civil police personnel temporarily deployed to the Democratic Republic of the Congo), UNOCI, MINUSTAH (and some years later, MINUJUSTH) and ONUB.

[19] MINURSO (Mauritania).

not been possible for the parties to settle it by negotiation. All the agreements concerned thus contain the following two paragraphs:[20]

> All other disputes between [the peacekeeping operation] and the Government concerning the interpretation or application of the present Agreement that are not settled by negotiation shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, mutatis mutandis, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.
>
> All differences between the United Nations and the Government arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention shall be dealt with in accordance with the procedure set out in Section 30 of the Convention.

In recent years, identical provisions have appeared in agreements concluded with host countries regarding the status of the larger of the Organization's Cluster III special political missions.[21]

Lastly, in its agreements with other international intergovernmental organizations, the United Nations includes a dispute resolution clause that contains, depending on the subject matter of the agreement, an amicable settlement clause and a clause on arbitration, similar to the provisions quoted above.

World Food Programme

[Original: English]

Yes. WFP has standard dispute settlement provisions for its agreements and contracts with international organizations, States, and private sector entities, including private donors, cooperating partners, and contractors (see the example provisions in annex).[1]

The provisions on methods for the settlement of disputes between WFP and its staff and consultants are set out in FAO Staff Regulations and Rules which apply to

[20] See the SOFAs for UNMIS, UNAMID, UNMISS, UNISFA (Sudan and South Sudan), MINUSMA and MINUSCA. (In the case of UNAMID, reference to the African Union is included, alongside the United Nations, in the second of the two paragraphs, the African Union being a party to the agreement.) The first of the two paragraphs appear in substance in the SOFAs that were concluded for MINURCAT with the Central African Republic and Chad. Since the paragraph relating to the establishment of a claims commission for third party claims was omitted, it was necessary there to set out in full the procedure for the establishment and operation of the arbitral tribunal.

[21] Thus, the wording that appears in the most recent SOFAs appears in the SOMAs for UNSMIL, UNPOS, UNSOM, the United Nations Mission in Colombia and the United Nations Verification Mission in Colombia; and, without the second of the two paragraphs, in the agreements for UNMIN and UNIOGBIS (Guinea-Bissau was not at the time a party to the Convention on the Privileges and Immunities of the United Nations, though Nepal was). For historical reasons, the pertinent provisions of the SOMAs for BINUH and for ONUB (which was later applied *mutatis mutandis* to BINUB) are the same as those of the SOFAs for MINUSTAH and ONUB, respectively. The agreements for UNIOSIL and, later, UNIPSIL applied the SOFA for UNAMSIL *mutatis mutandis* to those two missions; likewise, the agreement for UNOTIL applied the UNMISET SOFA *mutatis mutandis*. The agreements for BINUCA and MENUB contain a paragraph identical to that in the agreements for MINURCAT, together with the standard second paragraph from the model SOFA.

[1] The annex to the submission by WFP is available on the website of the Commission at https://legal.un.org/ilc/guide/10_3.shtml#govcoms.

WFP staff, and the WFP Human Resources Manual. Standard dispute resolution clauses are included in contracts with non-staff personnel.

World Health Organization

[Original: English]

Staff members

Dispute settlement is regulated under the WHO Staff Regulations and Staff Rules (relevant parts attached as annex 8).[1]

Goods suppliers and service providers (juridical and natural persons)

The contracts concluded with goods suppliers and service providers typically provide for the following:

> Settlement of disputes. Any matter relating to the interpretation or application of this agreement which is not covered by its terms shall be resolved by reference to Swiss law. Any dispute relating to the interpretation or application of this agreement shall, unless amicably settled, be subject to conciliation. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the modalities to be agreed upon by the parties or, in the absence of agreement, with the Rules of Arbitration of the International Chamber of Commerce. The parties shall accept the arbitral award as final.

In some cases, the resolution of disputes clause instead refers to the UNCITRAL Arbitration Rules.

Governments of member States

Agreements concluded with governments may refer to amicable settlement through negotiations and/or arbitration for the resolution of disputes.

Below are few samples of settlement of disputes clauses used in agreements concluded between WHO and governments:

> Any dispute between WHO and the Government arising out of or relating to this Agreement or any Supplementary Agreement shall be settled amicably by negotiation or other agreed mode of settlement, failing which such dispute shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairperson. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.
>
> All disputes concerning the interpretation or application of the present Agreement shall be settled amicably through negotiation between the Parties.
>
> Any difference arising out of the interpretation or application of this Agreement or any Supplementary Agreement hereto which is not otherwise settled by the

[1] Annex 8, as submitted by WHO, is available on the website of the Commission at https://legal.un.org/ilc/guide/10_3.shtml#govcoms.

parties shall be referred to arbitration. In that case each party shall appoint one arbitrator. Any differences that these cannot settle between themselves shall be submitted to a third arbitrator appointed by them to decide without further recourse.

Any difference or dispute between WHO and the Government arising out of or relating to this Agreement or any Supplementary Agreement shall be settled amicably through consultation and/or by negotiation between the parties through diplomatic channels.

International Organizations

Between a United Nations agency and WHO

The Parties will use their best efforts to promptly settle through direct negotiations any dispute, controversy or claim arising out of or in connection with this Agreement or any breach thereof. Any such dispute, controversy or claim which is not settled within sixty (60) days from the date either Party has notified the other Party of the nature of the dispute, controversy or claim and of the measures which should be taken to rectify it, will be resolved through consultation between the Executive Heads of each of the Parties.

Between WHO and the European Commission

13.1. The Parties shall endeavour to settle amicably any disputes or complaints relating to the interpretation, application or validity of the Agreement, including its existence or termination.

[…..]

13.4 Where the Organisation is an International Organisation: a) nothing in the Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party by its constituent documents, privileges and immunities agreements or international law; b) in the absence of an amicable settlement pursuant to Article 13.1 above, any dispute, controversy or claim arising out of or in relation to this Agreement, or the existence, interpretation, application, breach, termination, or invalidity thereof, shall be settled by final and binding arbitration in accordance with the 2012 Permanent Court of Arbitration Rules for Arbitration, as in effect on the date of entry into force of this Agreement. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The arbitration proceedings must take place in the Hague and the language used in the arbitral proceedings will be English. The arbitrator's decision shall be binding on all Parties and there shall be no appeal.

World Intellectual Property Organization

[Original: English]

Yes. The WIPO Standard/model clause regarding dispute settlement with third parties reads as follows:

The Parties shall use their best efforts to amicably settle any dispute arising out of the Contract. If not settled amicably within sixty days after receipt by one Party of the other Party's written request for such amicable settlement, the dispute may be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then in force. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English or French. The decisions of the arbitral tribunal shall be based on the terms and conditions of this Contract and its annexes and,

where further reference is required, on the general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages and no authority to award interest in excess of the United States Federal Reserve Bank of New York Se-cured Overnight Financing Rate (SOFR) then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of such a dispute.

World Trade Organization

[Original: English]

WTO has developed standard/model clauses as follow:

– In agreements with an international organization or a State, the clause reads:

The Participants will use their best efforts to settle amicably any dispute, controversy or claim arising out of or relating to this Agreement.

Any dispute, controversy or claim, which was not solved amicably within sixty (60) days, shall be settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) in force as of the date of this Agreement. The arbitral tribunal shall be composed of a sole arbitrator. The sole arbitrator shall be appointed by the Secretary-General of the Permanent Court of Arbitration unless the Participants agree on the name of an arbitrator within one month of resorting to arbitration. The arbitration shall take place in Geneva (Switzerland) and the language of the procedure shall be English. The arbitral award shall be final and may not be appealed before national courts for any reason whatsoever.

– For contractors, the WTO General Terms and Conditions includes the following clause:

> The WTO and the Contractor shall attempt to settle amicably any dispute, difference of opinion, or complaint relating to the Contract, its performance, or its termination, annulment, or invalidity. Any such dispute, difference of opinion, or complaint not resolved amicably within thirty (30) days shall be settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) in force as of the date of the Contract. The arbitral tribunal shall be composed of a sole arbitrator. The sole arbitrator shall be appointed by the Secretary General of the Permanent Court of Arbitration unless the WTO and the Contractor agree on the name of an arbitrator within one month of resorting to arbitration. The arbitration shall take place in Geneva (Switzerland) and the language of the procedure shall be English. The arbitral award shall be final and may not be appealed before national courts for any reason whatsoever.

10. Question 10 – Does “other disputes of a private law character” encompass all disputes other than those arising from contracts? If not, which categories are not included? What has been the practice of your organization in determining this? What methods of settlement have been used for “other disputes of a private law character” and what has been regarded as the applicable law?[§]

Common Fund for Commodities

[Original: English]

Not applicable.

Eurasian Group on Combating Money Laundering and Financing of Terrorism

[Original: English]

EAG supposes “other disputes of a private law character” should encompass all disputes other than those arising from contracts. EAG cannot mention any other categories being not included as EAG has not got the practice of dispute settlements.

Food and Agriculture Organization of the United Nations

[Original: English]

Disputes relating to data protection issues are governed by the FAO Data Protection Policy, which establishes a redress mechanism through which data providers may make requests for access, correction and deletion, or object to the processing of their data by FAO at any time. This mechanism is without prejudice to the status of FAO and the privileges and immunities it enjoys under public international law, including its immunity from every form of legal process.

Organization of African, Caribbean and Pacific States

[Original: English]

Not applicable.

Organisation for the Prohibition of Chemical Weapons

[Original: English]

OPCW has not been involved in disputes other than those arising from contracts and such disputes are not envisaged. Thus, OPCW has not yet developed any practice in determining the scope of the expression “other disputes of a private law character” and the application thereof.

Permanent Court of Arbitration

[Original: English]

PCA does not have any direct experience as an international organization with the invocation of the term “disputes of a private law character” in article 16 (1) of the Agreement Concerning the Headquarters of the Permanent Court of Arbitration.

[§] Cross-references contained in the questions were omitted to avoid confusion. Question 10 made reference to question 8 of the questionnaire. For the full text of question 8, see chap. II, sect. B.8 above.

United Nations Conference on Trade and Development

[Original: English]

Yes, UNCTAD has interpreted it as encompassing tort-related claims. Given the privileges and immunities of UNCTAD, UNCTAD usually does not bind itself to the substantive laws of Member States, and would, instead, apply general principles of international law. Methods of settling tort claims include negotiation, settlement and/or arbitration.

United Nations Development Programme

[Original: English]

The disputes UNDP encounters are described in the response of UNDP to question 1.

United Nations Framework Convention on Climate Change

[Original: English]

UNFCCC has amicably settled claims through negotiations, where the secretariat has clearly caused damage due [to] its actions. There have only been a few claims.

United Nations Office for Project Services

[Original: English]

UNOPS understands that "other disputes of a private law character" mainly include non-contractual disputes such as tort claims.

UNOPS does not have a standard practice in determining "other disputes of private law character" that do not arise from a contractual dispute. In practice, UNOPS hardly faces non-contractual disputes. However, should such a dispute arise, in order to fulfil the obligation of UNOPS under article II, section 29, of the Convention on the Privileges and Immunities of the United Nations to provide appropriate modes of dispute settlement, UNOPS would, when appropriate, agree *ex post* to resolve the dispute through formal or informal dispute resolution processes such as negotiation or arbitration.

United Nations Office of Legal Affairs

[Original: English]

Dispute resolution under section 29 (a) of the [Convention on the Privileges and Immunities of the United Nations] is limited to claims of a private law character. As referred to in the [reply of the United Nations Office of Legal Affairs to question 2] […],[1] there is a category of claims, which can be described as claims of a public law character, which would fall outside the scope of section 29 and for which the United Nations is not under an obligation by virtue of that section to provide for a mode of settlement to third party claimants. On a number of occasions, the United Nations has

[1] See also Report of the Secretary-General on procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (A/C.5/49/65), para. 23.

determined that it would not be under an obligation to provide for a mode of settlement to third party claimants or that certain claims for damage were excluded.[2]

World Food Programme

[Original: English]

Disputes other than those arising from contracts (i.e. disputes with third parties) mainly concern private law matters, such as tort liability for harm, loss or damage, or alleged breach of third party rights.

In addition to private law matters, disputes with third parties may raise questions or claims in connection to international or public administrative law matters, such as the status, privileges and immunities of WFP, which are subject to the relevant provisions of the [Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies] and other agreements between WFP and relevant States. These questions are generally subject to international law and the relevant international treaties and agreements regulating the privileges and immunities of WFP.

Disputes with third parties are infrequent. For certain categories of claims, WFP has established mechanisms to report and/or address third party claims that may give raise to a dispute.

(*a*) WFP has established rigorous mechanisms for individuals and communities to provide their feedback on operations of WFP, including claims alleging harm, damage or loss arising out of operations of WFP or its contractors or cooperating partners. These community feedback mechanisms allow WFP to proactively detect risks, or receive claims of harm, damage or loss and address them promptly, based on the principles of protection and accountability and in accordance with relevant WFP policies, regulations and rules.

(*b*) WFP has also established channels to report allegations of sexual abuse, sexual exploitation, and retaliation. Upon receipt of these allegations, WFP reviews them and, where warranted, investigates in accordance with the principles of accountability, independence, objectivity, integrity, and impartiality.

(*c*) WFP has also established a mechanism to review requests by individuals or entities to disclose information. If the request is denied by WFP, individuals or entities may appeal WFP disclosure decisions with WFP Information Disclosure Oversight Panel.

In addition, WFP agreements with contractors and cooperating partners aim to limit to the highest extent possible the exposure of WFP to third party claims. For example, they include provisions requiring contractors to retain liability for acts and/or omissions of their subcontractors and handle any relevant claims from such third parties.

In the event of a dispute falling outside the scope of the mechanisms described above, WFP and the third party concerned may agree on an alternative dispute

[2] For example, when settling claims of damage lodged by Belgian nationals with respect to ONUC in 1965, claims found to be solely due to military operations or military necessity, as well as claims for damage found to have been caused by persons other than United Nations personnel were excluded. See Study of the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities that was prepared by the Secretariat of the United Nations for the International Law Commission in 1967, *Yearbook of the International Law Commission, 1967*, vol. II p. 219, at paras. 54 and 56.

settlement method among negotiation, conciliation or arbitration depending on the nature of the dispute and the third party involved.

World Health Organization

[Original: English]

Please refer to the [replies of WHO to] questions 2, 8 and 9.

World Intellectual Property Organization

[Original: English]

Yes. The term "other disputes of a private law character" is understood to refer to tort action/liability and encompass therefore all disputes other than those arising from contracts. As previously indicated, no dispute based on tort law has ever been encountered by WIPO to date.

World Trade Organization

[Original: English]

The settlement of labour disputes is governed by the WTO Staff Regulations, Rules, and relevant policies of the organization. WTO has an internal justice system and recognizes the jurisdiction of ILOAT.

Disputes with consultants are resolved via contractual mechanisms, which typically foresee amicable settlement and, where necessary, arbitration. WTO generally excludes application of national laws and relies on the terms of the contract.

11. Question 11 – Have you developed a practice of agreeing ex post to third-party methods of dispute settlement (arbitration or adjudication) or waiving immunity in cases where disputes have already arisen and cannot be settled otherwise, e.g. because no treaty/contractual dispute settlement has been provided for?

Asian International Arbitration Centre

[Original: English]

There is insufficient data as AIAC has not encountered a situation that warrants a waiver of immunity in an international dispute setting. In a domestic setting, AIAC has never waived its immunity and the Malaysian Courts continue to uphold the same.

Common Fund for Commodities

[Original: English]

Not applicable.

Eurasian Group on Combating Money Laundering and Financing of Terrorism

[Original: English]

No, EAG has not ever applied such a practice.

Food and Agriculture Organization of the United Nations

[Original: English]

FAO has not developed this practice.

Organization of African, Caribbean and Pacific States

[Original: English]

No.

Organisation for the Prohibition of Chemical Weapons

[Original: English]

No.

Permanent Court of Arbitration

[Original: English]

No, PCA has not developed such a practice.

United Nations Conference on Trade and Development

[Original: English]

No.

United Nations Development Programme

[Original: English]

UNDP does not waive United Nations privileges and immunities. Besides cases involving the Ombudsman, UNDP has not agreed to any other third-party methods. UNDP has cases of former non-staff personnel (particularly in Latin America) filing labour claims before national courts. In these cases, UNDP prepares a note verbale for the Ministry of Foreign Affairs and request its assistance to uphold United Nations privileges and immunities.

United Nations Framework Convention on Climate Change

[Original: English]

UNFCCC has not encountered such situations.

United Nations Office for Project Services

[Original: English]

In practice there have barely been any disputes at UNOPS that could not be resolved through a contractual dispute resolution process and required an *ex post* agreement to third-party dispute resolution methods. UNOPS is aware of only one case in which it entered an *ex post* arbitration agreement with another party to enable it to formally pursue its claims.

UNOPS has not established a practice of waiving immunity in cases where disputes have already arisen and cannot be settled otherwise, as this would be contrary to established United Nations practice. In view of the privileges and immunities of the United Nations, the established practice of the United Nations is not to appear in local courts of Member States. Instead, where it is necessary to take action before local courts, the United Nations requests the government of the State concerned, through its Ministry for Foreign Affairs, to make representation on behalf of the United Nations. In addition, UNOPS notes that it does not have the authority to waive its immunity from legal process itself, but must seek the United Nations Secretary-General's approval for a waiver through the United Nations Legal Counsel. Such

waiver will only be granted in very special and exceptional circumstances when UNOPS has exhausted all other possible avenues to pursue its claims.

United Nations Office of Legal Affairs

[Original: English]

The Office of Legal Affairs is not aware of cases to date where the United Nations has agreed *ex post facto* to the use of such a third-party method of settling a dispute of a public international law character with a State or international organization.

The United Nations has agreed *ex post facto* to arbitration of disputes of a private law character arising in situations where no contractual dispute settlement has been provided for, and where other means of settling such disputes provided by General Assembly resolutions 41/210 and 52/247 do not apply (see [reply of United Nations Office of Legal Affairs to question 2]). As far as the Office of Legal Affairs is aware, in such cases, which in practice has happened rarely, the United Nations enters into a separate arbitration agreement, which is tailored to the dispute and consistent with the features of the standard/model clauses (see [reply of the United Nations Office of Legal Affairs to] question] 9 above).[1]

Generally, the Organization has not developed a practice of waiving immunity for purposes of pursuing remedies before judicial authorities in the absence of other modes of settlement. Whether or not the Secretary-General is in a position to waive immunity (from legal process) is a matter to be assessed in accordance with the [Convention on the Privileges and Immunities of the United Nations (the General Convention)] and the criteria set out therein. Section 20 of the General Convention provides that the "Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his [or her] opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations". Section 23 provides similarly with respect to experts on mission for the United Nations.

The determination whether immunity applies and if so, whether it can be waived without prejudice to the interests of the Organization, will typically precede the activation or outcome of any dispute resolution mechanism, such as under article VIII, section 29, of the General Convention. Failure to arrive at a resolution under this or any other mechanism does not, as such, alter the basis on which immunity applies and the criteria for assessing whether immunity, as applicable, ought to be waived. In isolated and exceptional cases, immunity has been waived for purposes of pursuing enforcement of arbitral awards.

Where the assertion of immunity itself becomes a matter of contention between the Organization and Member States, this may give rise to dispute resolution under article VIII, section 30, of the General Convention.

World Food Programme

[Original: English]

As mentioned in [reply of WFP to] question 10 […], arbitration is one of the dispute settlement methods that may be agreed as dispute settlement methods with a third party in the rare event of a dispute falling outside the scope of pre-established dispute settlement methods. However, in most of cases where WFP agreed on a

[1] See also Note by the Secretariat dated 6 February 2002 on preparation of uniform provisions on written form for arbitration agreements (A/CN.9/WG.II/WP.118).

dispute settlement method with a third party, the agreed dispute settlement method has been informal consultation or direct negotiation.

By virtue of its international status and immunity from legal process, WFP seeks to avoid using judicial adjudication as a third-party method of dispute settlement. Where a third party brings a claim before national judicial authorities, in light of the immunity of WFP from such legal process, WFP seeks to assert immunity through the appropriate channels, and invoke one of the alternative dispute resolution mechanisms above (see [reply of WFP to] question 10 above).

WFP does not have a practice of waiving its immunity from legal process. Any waiver is exceptional and is decided by the Secretary-General of the United Nations and the Director-General of FAO in accordance with the relevant provisions of the [Convention on the Privileges and Immunities of the United Nations] and [the Convention on the Privileges and Convention of the Specialized Agencies], respectively.

World Health Organization

[Original: English]

WHO accepted to appear *ex post* before national jurisdictions in exceptional cases to invoke its immunity from jurisdiction because legal proceedings were already initiated and it did not have any other option. An example in this regard is the order rendered by the Supreme Court of Pakistan on 15 December 2021 in re *WHO v. Muhammad Ansar Iqbal* (order attached as annex 9[1]). In this case, the dispute originated from claims of alleged non-payment of services made by a WHO supplier which led to a judgment from the High Court of Islamabad in Pakistan. The parties subsequently reached an out of court settlement. However, considering that the High Court of Islamabad had refused in its judgment to recognize the immunity of WHO, WHO decided to pursue the case before the Supreme Court of Pakistan which eventually set aside the judgment of the High Court of Islamabad, though without pronouncing itself on the issue of immunity, and held that said judgment shall have no precedential value.

World Intellectual Property Organization

[Original: English]

No.

World Trade Organization

[Original: English]

No.

[1] Annex 9, as submitted by WHO, is available on the website of the Commission at https://legal.un.org/ilc/guide/10_3.shtml#govcoms.