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Chapter V
Settlement of disputes to which international organizations are parties

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1. The text of the draft guidelines, together with commentaries, provisionally adopted by the Commission at its seventy-fourth session, is reproduced below.

Guideline 1

Scope

The present draft guidelines concern the settlement of disputes to which international organizations are parties.

Commentary

(1) Draft guideline 1 is concerned with the scope of application of the guidelines. The provision should be read together with draft guideline 2, which sets out the use of the terms "international organization", "dispute" and "means of dispute settlement". These terms also serve to delimit the scope of the topic.

(2) International organizations may be parties to a variety of disputes both on the international and the national level. Their disputes with members and host States, but also with third States or other international organizations, will most often arise under international law; whereas their disputes with private parties are likely to arise under national law or specifically stipulated applicable rules.

(3) Examples of the former type of disputes are those concerning rights and obligations under headquarters or seat agreements, such as those addressed in the *UNESCO Tax Regime*[1] or the *EMBL-Germany* arbitrations,[2] or the issues giving rise to the advisory opinions of the International Court of Justice in the *WHO Regional Office*[3] or the *PLO Mission* cases.[4] Other examples of disputes at the international level are international claims raised by international organizations on behalf of their agents injured by a State, such as the dispute which formed the background to the International Court of Justice's *Reparation for Injuries* opinion,[5] or claims raised against an international organization by States on behalf of their nationals, such as those addressed in the Belgium-United Nations settlement.[6]

(4) Examples of disputes at the national level are those of a delictual or tort character brought against an international organization by a private party being harmed by an international organization, such as the dispute giving rise to the *Starways* arbitration,[7] or disputes brought by an international organization against private parties for harm occurring,

[1] *Tax regime governing pensions paid to retired UNESCO officials residing in France (France UNESCO)*, 14 January 2003, *Reports of International Arbitral Awards* (UNRIAA), vol. XXV(Sales No. E.05.V.5), pp. 231–266.

[2] *European Molecular Biology Laboratory Arbitration (EMBL v. Germany)*, 29 June 1990, International Law Reports (ILR), vol. 105 (1997), pp. 1–74.

[3] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 7.

[4] *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, I.C.J. Reports 1988*, p. 12.

[5] *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 174.

[6] 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 Juridical Yearbook 1965* (United Nations publication, Sales No. 67.V.3), p. 39.

[7] *Starways Limited v. United Nations*, 24 September 1969 (Bachrach, Sole Arbitrator), ILR, vol. 44 (1972), pp. 433–437.

for instance, through the unauthorized use of the organization's logo or internet domain.[8] Furthermore, the most frequent types of disputes to which international organizations are parties – those concerning contractual rights and obligations, which are often governed by a specific national law or general principles of contract law –[9] fall under the category of disputes at the national level. Contractual and tort claims are often seen as giving rise to disputes of a "private law character" in the sense of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations[10] or similar treaty provisions.[11]

(5) The former type of disputes may be qualified as "international disputes" and the latter as "non-international" or as disputes arising under "national",[12] "municipal",[13] "internal",[14] or "domestic"[15] law, or as disputes of a "private law character". However, such distinctions may be difficult to draw in practice, especially because the nature of a dispute may change. A tort claim for personal injury or property damage, giving rise to a dispute of a "private law character" may be transformed into an international claim through its espousal by the victim's home State exercising diplomatic protection.[16] Similarly, like States, international organizations can choose whether they want to regulate their mutual rights and obligations in the form of an instrument governed by international law or in the form of a private law contract.[17] The relationship between individuals working for an international organization may be governed by a contract or by staff rules and regulations, the latter often considered part of an international organization's internal administrative law.[18]

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[8] *International Bank for Reconstruction and Development d/b/a The World Bank v. Yoo Jin Sohn*, Case No. 2002-0222, Administrative Panel Decision, 7 May 2002, WIPO [World Intellectual Property Organization] Arbitration and Mediation Center. Available at https://www.wipo.int/amc/en/domains/decisions/html/2002/d2002-0222.html.

[9] See "Legal opinion of the Secretariat of the United Nations on law applicable to contracts concluded by the United Nations with private parties—procedures for settling disputes arising out of such contracts—relevant rules and practices", *United Nations Juridical Yearbook 1976* (United Nations publication, Sales No. E.78.V.5), p. 159, at p. 165; "Legal opinion of the Secretariat of the United Nations on determination of the applicable law to contracts concluded between the United Nations and private parties – "service contracts" and "functional contracts" – UNCITRAL arbitral rules", *United Nations Juridical Yearbook 1988* (United Nations publication, Sales No. E.99.V.1), p. 285. See also August Reinisch, "Contracts between international organizations and private law persons", in Anne Peters and Rüdiger Wolfrum (eds.), *The Max Planck Encyclopedia of Public International Law* (online, Oxford University Press, 2021). Available at http://www.mpepil.com/.

[10] Art. VIII, sect. 29, of the 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 ("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").

[11] Art. IX, sect. 31, of the Convention on the Privileges and Immunities of the Specialized Agencies (New York, 21 November 1947), *ibid*., vol. 33, No. 521, p. 261.

[12] See, *e.g.*, art. 2, para. 3, and art. 6 of the draft articles on prevention and punishment of crimes against humanity, A/74/10, paras. 44–45; arts. 14 and 15 of the draft articles on the protection of persons in the event of disasters, *Yearbook of the International Law Commission, 2016*, vol. II (Part Two), p. 26, para. 48.

[13] See, *e.g.*, arts. 29 and 38 of the draft articles on consular relations, *Yearbook … 1961*, vol. II, at pp. 109 and 113–114; para. (3) of the commentary to art. 1 of the articles on the responsibility of international organizations, *Yearbook … 2011*, vol. II (Part Two), paras. 87–88, at p. 47 (see also General Assembly resolution 66/100 of 9 December 2011, annex).

[14] See, *e.g.*, arts. 3, 4 and 32 of the articles on responsibility of States for internationally wrongful acts and commentaries thereto, *Yearbook … 2001*, vol. II (Part Two), para. 76, at pp. 36–38, 40–42 and 94 (see also General Assembly resolution 56/83 of 12 December 2001, annex).

[15] See, *e.g.*, paras. (1), (2) and (4) of the commentary to art. 9 of the draft articles on consular relations, *Yearbook … 1961*, vol. II, at pp. 99–100.

[16] Jean-Pierre Ritter, "La protection diplomatique à l'égard d'une organisation internationale", *Annuaire français de droit international*, vol. 8 (1962), pp. 427–456.

[17] See para. (3) of the commentary to draft art. 2 of the draft articles on the law of treaties between States and international organizations or between international organizations, *Yearbook … 1982*, vol. II (Part Two), para. 63, at p. 18.

[18] C. F. Amerasinghe, *The Law of the International Civil Service as Applied by International Administrative Tribunals*, 2 vols. (Oxford, Clarendon Press; New York, Oxford University Press,

(6) Furthermore, "non-international" disputes, such as contractual or delictual/tort disputes, may raise important issues determined by international law, such as legal personality, jurisdictional immunity, human rights obligations to provide for access to justice or the treaty-based duty to make provision for appropriate modes of settlement of disputes of a private law character.[19]

(7) As a result, a sharp distinction between international disputes and non-international ones is often not feasible. To ensure that disputes of a "private law character" and any disputes that may be qualified as "non-international" fall within the scope of the present draft guidelines, the word "international" before "disputes" was deleted. As a result of the change to the provision on the scope of the guidelines, the Commission decided, on 25 May 2023, to change the title of the topic by deleting the word "international" before "disputes" to make it clear that the draft guidelines would address all kinds of disputes to which international organizations are parties.[20]

(8) International organizations may be subject to various obligations concerning the settlement of disputes to which they are parties. These may be found in their constituent instruments,[21] multilateral privileges and immunities treaties,[22] or headquarters agreements.[23] Further, international organizations may have agreed to specific forms of dispute settlement in contracts with third parties.[24] It is thus not feasible to design across-the-board draft articles that may eventually form the basis for a treaty. Instead, it seems more apt to restate the existing practices of international organizations concerning the settlement of their disputes and to develop recommendations for the most appropriate way of handling them.[25]

(9) For this purpose, the elaboration of a set of draft guidelines appears to be the most suitable form for the Commission's output, since "guidelines" are "not a binding instrument but a *vade mecum*, a 'toolbox' in which [addressees] should find answers to the practical questions".[26] The guidelines will be mainly concerned with the availability and adequacy of means for the settlement of disputes to which international organizations are parties. They are not intended to elaborate detailed sets of procedural rules.

(10) In addition to the guidelines, however, the Commission may also develop a set of model clauses[27] that may be used in treaties or other instruments governed by international law, as well as in contracts or other national law instruments.

1988); Henry G. Schermers and Niels M. Blokker, *International Institutional Law: Unity Within Diversity*, 6th ed. (Leiden, Brill Nijhoff, 2018), pp. 382 et seq.

19 See, for the United Nations, 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. 5.

20 At its 3631st meeting, held on 25 May 2023.

21 Art. XVIII, paragraph (a), of the Agreement relating to the International Telecommunications Satellite Organization "INTELSAT" (Washington, opened for signature 20 August 1971), United Nations, *Treaty Series*, vol. 1220, No. 19677, p. 21.

22 Art. 32 of the Agreement on the Privileges and Immunities of the International Criminal Court (New York, 9 September 2002), *ibid*., vol. 2271, No. 40446, p. 3.

23 Art. VIII, sect. 21, of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (Lake Success, 26 June 1947), *ibid*., vol. 11, No. 147, p. 11.

24 See footnote 19 above.

25 Para. (2) of the introduction to the Guide to Practice on Reservations to Treaties, *Yearbook … 2011*, vol II (Part Three), at p. 35 ("The purpose of this Guide is not— or, in any case, not only—to offer the reader a guide to past (and often uncertain) practice in this area, but rather to direct the user towards solutions that are consistent with existing rules (where they exist) or to the solutions that seem most appropriate for the progressive development of such rules"); para. (1) of the general commentary to the Guide to Provisional Application of Treaties, A/76/10, para. 52 ("The objective of the Guide is to direct States, international organizations and other users to answers that are consistent with existing rules or that seem most appropriate for contemporary practice").

26 Para. (4) of the introduction to the Guide to Practice on Reservations to Treaties, *Yearbook … 2011*, vol. II (Part Three), at p. 36.

27 See the "Examples of provisions on provisional application of treaties" in the Guide to Provisional Application of Treaties, annex, A/76/10, para. 51, at pp. 55–68.

Guideline 2

Use of terms

For the purposes of the present draft guidelines:

(a) "international organization" means an entity possessing its own international legal personality, established by a treaty or other instrument governed by international law, that may include as members, in addition to States, other entities, and has at least one organ capable of expressing a will distinct from that of its members.

(b) "dispute" means a disagreement concerning a point of law or fact in which a claim or assertion is met with refusal or denial.

(c) "means of dispute settlement" refers to negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of resolving disputes.

Commentary

(1) Draft guideline 2 contains definitions of three core terms used in draft guideline 1. They contribute to delimiting the scope of the draft guidelines.

(2) The definition of "international organization" in draft guideline 2, subparagraph (a), builds on the definition contained in article 2, subparagraph (a), of the articles on the responsibility of international organizations, adopted by the Commission in 2011. Draft guideline 2, subparagraph (a), outlines the commonly accepted characteristic features of an international organization and stresses the possession of its "own international legal personality" as the paramount characteristic relevant for purposes of dispute settlement.

(3) The Commission initially defined "international organizations" merely as "intergovernmental organizations". Identical definitions can be found in the Vienna Convention on the Law of Treaties,[28] the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations,[29] the Vienna Convention on the Representation of States in their Relations with International Organizations,[30] and the Vienna Convention on Succession of States in respect of Treaties.[31] This definition mainly served the purpose of excluding non-governmental organizations. However, merely identifying "international organizations" as "intergovernmental organizations", without further defining them, was questioned within the Commission.[32]

[28] Art. 2, para. 1 (*i*), Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), United Nations, *Treaty Series*, vol. 1155, No. 18232, p. 331 ("'international organization' means an intergovernmental organization").

[29] Art. 2, para. 1 (*i*), Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (Vienna, 21 March 1986, not yet in force), *Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations (Documents of the Conference)*, vol. II, document A/CONF.129/15 (reproduced in A/CONF.129/16/Add.1 (Vol. II)) ("'international organization' means an intergovernmental organization").

[30] Art. 1, para. 1, of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character (Vienna, 14 March 1975, not yet into force), A/CONF.67/16; or *United Nations Juridical Yearbook 1975* (United Nations publication, Sales No. E.77.V.3), p. 87 ("'international organization' means an intergovernmental organization").

[31] Art. 2, para. 1 (n), of the Vienna Convention on Succession of States in respect of Treaties (Vienna, 23 August 1978), United Nations, *Treaty Series*, vol. 1946, No. 33356, p. 125 ("'international organization' means an intergovernmental organization").

[32] Para. (23) to draft art. 2 of the draft articles on the law of treaties between States and international organizations or between international organizations *Yearbook … 1982*, vol. II (Part Two), para. 63, at p. 21, ("the Commission has wondered whether the concept of international organization should not be defined by something other than the 'intergovernmental' nature of the organization").

(4) With the articles on the responsibility of international organizations, the Commission adopted a more elaborate definition.[33] The simple reference to their "intergovernmental" nature in the previous definition was criticized as too narrow because several organizations consisted of members other than States: in particular, other international organizations.[34] Article 2, subparagraph (a), of the articles on the responsibility of international organizations defined an "international organization" as

> an organization established by treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities.[35]

This definition emphasized that the legal basis of an international organization was to be found on the international level, by referring to an "organization established by treaty or other instrument governed by international law". It did not explicitly refer to the common characteristic feature of organs through which an organization acts; although the existence of "organs" was arguably inherent in the notion of an "organization" and the articles on the responsibility of international organizations even contain a definition of organs,[36] which indicates that organs are integral features of international organizations. The definition in the articles on the responsibility of international organizations further expressly reflected the fact that, in addition to States, other entities might become members of international organizations. Finally, it highlighted that a core feature of an international organization is the possession of its own international legal personality, i.e. a legal personality on the international plane distinct from that of its members. This is particularly important for incurring international responsibility.[37]

(5) Most international organizations are established by treaties regardless of how those treaties may be referred to: constituent instruments of international organizations include treaties, conventions, charters, constitutions, statutes, or articles of agreement.[38] In addition, some international organizations have been set up by resolutions adopted by an international organization[39] or by decisions at conferences of States. An example of the former is the establishment of the United Nations Industrial Development Organization (UNIDO)[40] which was originally a subsidiary organ of the General Assembly of the United Nations.[41] After

[33] The Commission's Special Rapporteur, Giorgio Gaja, originally suggested the use of the term "international organization" for "an organization which includes States among its members insofar as it exercises in its own capacity certain governmental functions". See *Yearbook … 2003*, vol. II (Part One), document A/CN.4/532 (first report on responsibility of international organizations), p. 105, para. 34.

[34] Para. (3) of the commentary to art. 2 of the articles on the responsibility of international organizations, *Yearbook … 2011*, vol. II (Part Two), paras. 87–88, at p. 49 ("First, it is questionable whether by defining an international organization as an intergovernmental organization one provides much information: it is not even clear whether the term 'intergovernmental organization' refers to the constituent instrument or to actual membership. Second, the term 'intergovernmental' is in any case inappropriate to a certain extent, because several important international organizations have been established with the participation also of State organs other than Governments. Third, an increasing number of international organizations include among their members entities other than States as well as States").

[35] Art. 2 (a), *ibid*., at p. 49.

[36] Art. 2 (c), *ibid*. ("'organ of an international organization' means any person or entity which has that status in accordance with the rules of the organization").

[37] Para. (10) of the commentary to article 2, *ibid*., at p. 50.

[38] Schermers and Blokker, *International Institutional Law …*, p. 15.

[39] Institute of International Law, resolution of the 7th Commission, "Limits to evolutive interpretation of the constituent instruments of the organizations within the United Nations system by their internal organs", 4 September 2021, first preambular para. ("Noting that international organizations are established by multilateral agreements or by decisions of other international organizations").

[40] Constitution of the United Nations Industrial Development Organization (Vienna, 8 April 1979), United Nations, *Treaty Series*, vol. 1401, No. 23432, p. 3. See also Abdulqawi A. Yusuf, "The role of the legal adviser in the reform and restructuring of an international organization: the case of UNIDO", in United Nations (ed.), *Collection of Essays by Legal Advisers of States, Legal Advisers of International Organizations and Practitioners in the Field of International Law* (1999), pp. 329–350.

[41] General Assembly resolution 2152 (XXI) of 17 November 1966.

separating from the United Nations in 1979,[42] it became a United Nations specialized agency when the relationship agreement, accepted by the General Assembly in 1985,[43] entered into force. Examples of organizations established by decisions of conference include the Asian-African Legal Consultative Organization,[44] the Organization of the Petroleum Exporting Countries,[45] the Southern African Development Community,[46] or the Nordic Council.[47]

(6) The establishment of international organizations based on an instrument governed by international law is crucial for distinguishing them from non-governmental organizations (NGOs)[48] as well as from transnational corporations or multinational enterprises.[49] NGOs and business entities are created on the basis of national law and usually take the various forms available to non-profit entities, such as associations, foundations or charities,[50] or to corporate entities with a profit-making purpose.[51]

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[42] General Assembly resolution 34/96 of 13 December 1979.

[43] General Assembly resolution 40/180 of 17 December 1985; United Nations, *Treaty Series*, vol. 1412, No. 937, p. 305.

[44] The Asian-African Legal Consultative Organization (originally known as the Asian Legal Consultative Committee) was constituted by the Governments of Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria on 15 November 1956, as an outcome of the Asia-Africa Conference, held in Bandung, Indonesia, in April 1955. Asian Legal Consultative Committee Statutes (1956), in "Asian Legal Consultative Committee: first session – New Delhi: India, April 18 to 27, 1957" (New Delhi, Caxton Press), p. 7, available at https://www.aalco.int/First%20Session%20New%20Delhi.pdf.

[45] See Agreement concerning the creation of the Organization of Petroleum Exporting Countries (OPEC) (Baghdad, 14 September 1960), United Nations, *Treaty Series*, vol. 443, No. 6363, p. 247, Resolution I. 2, para. 1 ("With a view to giving effect to the provisions of Resolution No. I the Conference decides to form a permanent Organization called the Organization of the Petroleum Exporting Countries, for regular consultation among its Members with a view to …").

[46] The predecessor of the Southern African Development Community was the Southern African Development Co-ordination Conference. The Southern African Development Co-ordination Conference was established through a series of decisions adopted at conferences of States with incremental institutionalization. On 17 August 1992, the Southern African Development Community was founded at a summit held in Windhoek. See Declaration and Treaty of the Southern African Development Community, available at https://www.sadc.int/sites/default/files/2021-11/Declaration__Treaty_of_SADC_0.pdf.

[47] Denmark, Iceland, Norway and Sweden were the founding members of the Nordic Council when it was formed in 1952. See Nordic Co-Operation, "The Nordic Council", available at https://www.norden.org/en/information/nordic-council.

[48] See Economic and Social Council resolution 1996/31 on the arrangements for consultation with non-governmental organizations, para. 12 ("Any such organization that is not established by a governmental entity or intergovernmental agreement shall be considered a non-governmental organization for the purpose of these arrangements").

[49] In United Nations terminology, the notion "transnational corporations" prevails (see Commission on Transnational Corporations, established by the Economic and Social Council, pursuant to its resolution 1913 (LVII) (*Yearbook of the United Nations 1974* (United Nations publication, Sales No. E.76.I.1), vol. 28, part 1, p. 485), whereas the Organisation for Economic Co-operation and Development (OECD) uses the expression "multinational enterprises" (see OECD, *Guidelines for Multinational Enterprises* (2011 ed.)). See also Peter T. Muchlinski, *Multinational Enterprises and the Law*, 3rd ed. (Oxford, Oxford University Press, 2021), pp. 3 et seq.

[50] A useful definition of NGOs is found in article 1 of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations (Strasbourg, 24 April 1986), *European Treaty Series*, No. 124 (NGOs are "associations, foundations and other private institutions which …: (a) have a non-profit-making aim of international utility; (b) have been established by an instrument governed by the internal law of a Party; (c) carry on their activities with effect in at least two States; and (d) have their statutory office in the territory of a Party and the central management and control in the territory of that Party or of another Party"). See also Bas Arts, Math Noortmann and Bob Reinalda (eds.), *Non-State Actors in International Relations* (Aldershot, Ashgate, 2001); Math Noortmann, August Reinisch and Cedric Ryngaert (eds.), *Non-State Actors in International Law* (Oxford, Bloomsbury, 2015); Stephan Hobe, "Non-governmental organizations", in Rüdiger Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* vol. VII (Oxford, Oxford University Press, 2012), p. 716.

[51] The Code of Conduct on Transnational Corporations refers to transnational corporations as enterprises "comprising entities in two or more countries, regardless of the legal form and fields of

(7) Even in the rare instances where an NGO is transformed into an international organization, that international organization is created by an international agreement. For instance, the International Union of Official Travel Organizations was originally a non-governmental organization under Swiss law that was subsequently transformed into the World Tourism Organization.[52] Today, the World Tourism Organization is a specialized agency of the United Nations.[53] It was created by States "whose official tourism organisations are Full Members of [the International Union of Official Travel Organizations] at the time of adoption of these Statutes" through ratifying a treaty.[54]

(8) The reference to "a treaty or other instrument governed by international law" reflects the fact that only States, other *sui generis* subjects of international law, such as the Holy See or the Sovereign Order of Malta, and international organizations which possess treaty-making capacity can be parties to an international organization's constituent treaty. It is not intended to exclude entities other than States from subsequently becoming members of an international organization.

(9) The reference to "other entities" than States as potential members of international organizations affirms that even entities not possessing treaty-making capacity may be accepted as members of an organization if the rules of that organization so provide. In this sense, some – in particular technical – international organizations have members that are not sovereign States, but territories or entities with capacities relevant to the respective organizations. For instance, certain territories have been able to become members of the World Trade Organization[55] or of the World Meteorological Organization.[56]

(10) The fact that subparagraph (a) considers that an international organization "may include as members, in addition to States, other entities" does not imply that a plurality of States as members is required. Thus, an international organization may be established by a State and an international organization.[57] It is also not meant to imply that it always requires States as members. Although rare in practice, international organizations may be established by and entirely consist of international organizations, as evidenced by the Joint Vienna Institute.[58]

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activity of these entities, which operate under a system of decision-making, permitting coherent policies and a common strategy through one or more decision-making centres, in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of others and, in particular, to share knowledge, resources and responsibilities with the others" (E/1988/39/Add.1, para. 1) and the OECD *Guidelines for Multinational Enterprises* indicate that "multinational enterprises … operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed" (sect. I. Concepts and Principles, para. 4).

[52] Statutes of the World Tourism Organization (Mexico City, 27 September 1970), United Nations, *Treaty Series*, vol. 985, No. 14403, p. 339.

[53] General Assembly resolution 58/232 of 23 December 2003.

[54] Art. 36, Statutes of the World Tourism Organization.

[55] Art. XII, para. 1 ("Accession"), of the Marrakesh Agreement establishing the World Trade Organization (Marrakesh, 15 April 1994, entered into force 1 January 1995), United Nations, *Treaty Series*, vol. 1867, No. 31874, p. 3 (permitting membership of "[a]ny separate customs territory possessing full autonomy in the conduct of its external commercial relations").

[56] Art. 3 of the Convention of the World Meteorological Organization (Washington D.C., 11 November 1947), *ibid*., vol. 77, No. 998, p. 143 (permitting membership of "[a]ny territory or group of territories maintaining its own meteorological service").

[57] Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone (Freetown, on 16 January 2002), *ibid*., vol. 2178, No. 38342, p. 137.

[58] Agreement for the establishment of the Joint Vienna Institute (Vienna, 27 and 29 July 1994 and 10 and 19 August 1994), *ibid*., vol. 2029, No. 1209, p. 391. The Joint Vienna Institute was established by the Bank for International Settlements, the European Bank for Reconstruction and Development, the International Bank for Reconstruction and Development, the International Monetary Fund and the Organisation for Economic Co-operation and Development. Subsequently, the World Trade Organization also joined.

(11) Nevertheless, the most frequent cases of entities other than States becoming members of international organizations are international organizations. This is particularly true for regional (economic) integration organizations. A number of constituent instruments of international organizations expressly provide for such membership.[59]

(12) Subparagraph (a) further specifically mentions the possession of "at least one organ capable of expressing a will distinct from that of its members". This characteristic feature of an international organization is only implicitly found in the 2011 definition of the Commission.[60]

(13) The inclusion of this element in the text of the definition makes explicit the generally accepted view that an international organization must have at least one organ that is capable of expressing the organization's will ("will of its own" or "*volonté distincte*")[61] in order to perform the tasks or functions entrusted to the organization. The concept of an international organization's own will is closely related to the idea that an international organization has a legal personality separate from its members,[62] or, as the International Court of Justice put it, "a certain autonomy", and that through such organs international organizations can pursue "common goals".[63]

(14) International organizations regularly possess numerous organs, such as plenary organs, in which all members are represented, executive ones with a more restricted composition, secretariats and often expert or judicial organs with individuals serving in their

[59] Art. II, para. 3, of the Constitution of the Food and Agriculture Organization of the United Nations (Quebec, 16 October 1945), *British and Foreign State Papers*, vol. 145, p. 910, provides for the possibility "to admit as a Member of the Organization any regional economic integration organization meeting the criteria set out in paragraph 4 of this Article". That paragraph specifies that "a regional economic integration organization must be one constituted by sovereign States, a majority of which are Member Nations of the Organization, and to which its Member States have transferred competence over a range of matters within the purview of the Organization, including the authority to make decisions binding on its Member States in respect of those matters"). To date, only the European Union has made use of this option. See *Basic texts of the Food and Agriculture Organization of the United Nations, vols. I and II*, 2017 ed., p. 240. See also art. 4 of the Agreement establishing the Common Fund for Commodities (Geneva, 27 June 1980), United Nations, *Treaty Series*, vol. 1538, No. 26691, p. 3 ("Membership in the Fund shall be open to: … [a]ny intergovernmental organization of regional economic integration which exercises competence in fields of activity of the Fund").

[60] See text at footnote 36 above.

[61] Éric David, *Droit des Organisations Internationales* (Brussels, Bruylant, 2016), p. 582; Manuel Diez de Velasco Vallejo, *Las Organizaciones Internacionales*, 14th ed. (Madrid, Tecnos, 2006), pp. 46–47; Rosalyn Higgins *et al*., *Oppenheim's International Law: United Nations* (Oxford University Press, Oxford, 2017), p. 385; Jan Klabbers, *An Introduction to International Organizations Law*, 4th ed. (Cambridge, Cambridge University Press, 2022), p. 12; Shigeru Kozai et al., *Introduction to International Law*, 3rd ed. (Tokyo, Yuhikaku Publishing Co. Ltd., 1986), p. 101; Pierre-Yves Marro, *Rechtsstellung internationaler Organisationen* (Zürich, Dike, 2021), p. 29; Francisco Rezek, *Direito internacional público*, 16th ed. (São Paulo, Editora Saraiva, 2016), pp. 301–302; Matthias Ruffert and Christian Walter, *Institutionalisiertes Völkerrecht. Das Recht der Internationalen Organisationen und seine wichtigsten Anwendungsfelder*, 2nd ed. (Munich, C.H. Beck, 2015), p. 4; Schermers and Blokker, *International Institutional Law …* (see footnote 13 above), pp. 48 and 1031; Kirsten Schmalenbach, "International organizations or institutions, general aspects", in Rüdiger Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* vol. V (Oxford, Oxford University Press, 2012), p. 1128; Ignaz Seidl-Hohenveldern and Gerhard Loibl, *Das Recht der Internationalen Organisationen einschließlich der Supranationalen Gemeinschaften*, 7th ed. (Köln, Carl Heymanns, 2000), p. 7.

[62] See para. (10) of the commentary to article 2 of the articles on the responsibility of international organizations, *Yearbook … 2011*, vol. II (Part Two), paras. 87–88, at p. 50 (referring to "the requirement in article 2, subparagraph (*a*), that the international legal personality should be the organization's 'own', a term that the Commission considers as synonymous with the phrase 'distinct from that of its member States'").

[63] *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, *I.C.J. Reports 1996*, p. 66, at p. 75, para. 19 (characterizing the object of constituent instruments of international organizations as "to create new subjects of law endowed with a certain autonomy, to which the parties entrust the task of realizing common goals").

personal capacities.[64] That a minimum of one organ is required to distinguish an organization from a mere treaty-based form of cooperation seems inherent in the notion of "organization".[65]

(15) The will of organizations is formed through the decision-making procedures to be adhered to by their organs pursuant to the rules of the various organizations. These decision-making procedures may range from different forms of majority voting to unanimity, consensus or other techniques. So-called member-driven or forum-like organizations, operating on the basis of unanimity, also express their own will.

(16) Subparagraph (a) maintains the requirement of the possession of international legal personality as found in the 2011 definition of the Commission in the articles on the responsibility of international organizations. Such personality is required for the purposes of entering into treaties, incurring international responsibility or, in the present context, for raising international claims or being the respondent to such claims, or more generally being a party before an international dispute settlement mechanism.

(17) There exists a long-standing scholarly debate about the source of such personality.[66] According to the "will theory",[67] international organizations derive their international legal personality from the express or implied will of the entities creating them. Pursuant to the "objective personality theory", their international legal personality stems from their mere existence.[68] A third, compromise approach[69] asserts that the international legal personality of an international organization can be presumed, when it performs acts that require such separate personality.

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[64] See Celso D. de Albuquerque Mello, *Curso de Direito Internacional Público* vol. I, 12th ed., (Rio de Janeiro, Renovar, 2000), pp. 577–579; José E. Alvarez, *International Organizations as Law-makers* (Oxford, Oxford University Press, 2005), p. 9; Jean Combacau and Serge Sur, *Droit international public*, 13th ed. (Paris, LGDJ, 2019), pp. 782 et seq.; Diez de Velasco Vallejo, *Las Organizaciones Internacionales* (footnote 54 above), pp. 101–109.

[65] Antônio Augusto Cançado Trindade, *Princípios do Direito Internacional Contemporâneo*, 2nd ed. (Brasília, Fundação Alexandre de Gusmão, 2017) p. 336; Patrick Daillier and others, *Droit international public*, 9th ed. (Paris, LGDJ, 2022), p. 861; Inés Martínez Valinotti, *Derecho Internacional Público* (Asunción, Colección de Estudios Internacionales, 2012), p. 229.

[66] Heber Arbuet-Vignali, "Las organizaciones internacionales como sujetos del derecho internacional", in Eduardo Jiménez de Aréchaga, Heber Arbuet-Vignali and Roberto Puceiro Ripoll (eds.), *Derecho Internacional Público: Principios, normas y estructuras* vol. I (Montevideo, Fundación de Cultura Universitaria, 2005), pp. 154–156; David J. Bederman, "The souls of international organizations: legal personality and the lighthouse at Cape Spartel", *Virginia Journal of International Law*, vol. 36, No. 2 (1996), pp. 275–377; Chris Osakwe, "Contemporary Soviet doctrine on the juridical nature of universal international organizations", *American Journal of International Law*, vol. 65, No. 3 (July 1971), pp. 502–521; Manuel Rama-Montaldo, "International legal personality and implied powers of international organizations", *The British Yearbook of International Law*, vol. 44 (1970), pp. 111–155.

[67] Philippe Sands and Pierre Klein, *Bowett's Law of International Institutions*, 6th ed. (London, Sweet and Maxwell, 2009), p. 479; Ruffert and Walter, *Institutionalisiertes Völkerrecht* (see footnote 61 above), p. 58. See also Grigory I. Tunkin, "The Legal Nature of the United Nations", *Receuil des Cours*, vol. 119 (1966-III), pp. 1–68.

[68] Originally developed in a series of contributions by Finn Seyersted. See Finn Seyersted, "International personality of intergovernmental organizations: do their capacities really depend upon their constitutions?", *Indian Journal of International Law*, vol. 4 (1964), pp. 1–74; "Is the international personality of intergovernmental organizations valid vis-à-vis non-members?", *ibid*., pp. 233–268; "Objective international personality of intergovernmental organizations: do their capacities really depend upon the conventions establishing them?", *Nordisk Tidsskrift for International Ret*, vol. 34 (1964), pp. 1–112. See also Pierre d'Argent, "La personnalité juridique de l'organisation internationale", in Evelyne Lagrange and Jean-Marc Sorel (eds.), *Droit des organisations internationales* (Paris, LGDJ, 2013), p. 452; Dapo Akande, "International organizations", in Malcolm D. Evans (ed.) *International Law*, 5th ed. (Oxford, Oxford University Press, 2018), pp. 233–234.

[69] Jan Klabbers, "Presumptive personality: the European Union in international law", in Martti Koskenniemi (ed.), *International Law Aspects of the European Union* (The Hague, Kluwer Law International, 1998), p. 231; Angelo Golia Jr and Anne Peters, "The concept of international organization", in Jan Klabbers (ed.), *The Cambridge Companion to International Organizations Law* (Cambridge, Cambridge University Press, 2022), p. 37.

(18) International legal personality is only rarely explicitly conferred upon an international organization in its constituent instrument.[70] Thus, it regularly has to be deduced from the powers conferred upon an international organization.

(19) This was also the approach of the International Court of Justice in the *Reparation for Injuries* advisory opinion.[71] Therein, the Court derived the international legal personality of the United Nations from the Charter-based rights of the Organization, which required its Members to assist it, to accept and carry out Security Council decisions, as well as from its privileges and immunities and its powers to conclude international agreements. The Court found that

> the Organization was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane.[72]

Since most international organizations perform at least some similar acts, having been either explicitly or implicitly empowered to do so, it seems safe to conclude that most international organizations enjoy international legal personality as a result. In fact, without possessing personality, an international organization could not carry out some functions.[73] Therefore, it is generally accepted that, as a rule, international organizations possess international legal personality.[74]

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[70] See, e.g. art. 10, sect. 1, of the Agreement establishing the International Fund for Agricultural Development (Rome, 13 June 1976), United Nations, *Treaty Series*, vol. 1059, No. 16041, p. 191 ("The Fund shall possess international legal personality"); art. 176 of the United Nations Convention on the Law of the Sea (with regard to the International Sea-Bed Authority) (Montego Bay, 10 December 1982), United Nations, *Treaty Series*, vol. 1833, No. 31363, p. 3 ("The Authority shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes"); art. 34 of the Additional Protocol to the Asunción Treaty on the Institutional Structure of Mercosur [Southern Common Market] (Ouro Preto, 17 December 1994), *ibid*., vol. 2145, annex A, No. A-37341, p. 298 ("Mercosur shall possess legal personality of international law"); art. 4, para. 1, of the Rome Statute of the International Criminal Court (Rome, 17 July 1998), *ibid*., vol. 2187, No. 38544, p. 3 ("The Court shall have international legal personality"); art. I, para. 2, of the Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization (Vienna, 2 September 2010), *ibid*., vol. 2751, No. 48545, p. 81 ("The Academy shall possess full international legal personality").

[71] *Reparation for injuries suffered in the service of the United Nations* (see footnote 5 above).

[72] *Ibid.*, p. 179.

[73] See also the opinion of the International Court of Justice in the International Fund for Agricultural Development (IFAD) case, *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, Advisory Opinion, I.C.J. Reports 2012*, p. 10, at p. 36, para. 61, in which it found that "the Global Mechanism [of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa] had no power and has not purported to exercise any power to enter into contracts, agreements or 'arrangements', internationally or nationally". This led the Court to conclude that in the absence of a separate legal personality, the Global Mechanism had to "identify an organization to house it and to make appropriate arrangements with such an organization for its administrative operations", which included acting on behalf of IFAD for employing staff members.

[74] See paras. (7) et seq. of the commentary to article 2 of the articles on the responsibility of international organizations, *Yearbook … 2011*, vol. II (Part Two), paras. 87–88, at p. 50; Schermers and Blokker, *International Institutional Law …* (see footnote 13 above), pp. 1031 et seq.; James Crawford, *Brownlie's Principles of Public International Law*, 9th ed. (Oxford, Oxford University Press, 2019), p. 157; Paola Gaeta, Jorge E. Viñuales and Salvatore Zappalà, *Cassese's International Law*, 3rd ed. (Oxford, Oxford University Press, 2020), pp. 143–145; Golia Jr and Peters, "The concept of international organization" (see footnote 48 above), p. 37; see also Tarcisio Gazzini, "Personality of international organizations", in Jan Klabbers and Åsa Wallendahl (eds.), *Research Handbook on the Law of International Organizations* (Cheltenham, Edward Elgar Publishing, 2011), p. 33; Zewei Yang (ed.), *Liang Xi's International Organization Law—Principles and Practices*, 7th ed. (Wuhan, Wuhan University Press, 2022), pp. 4–5. There remains controversy over the international legal personality of organizations such as the Organization for Security and Cooperation

(20) In the *Reparation for Injuries* opinion, the Court, which was asked whether the United Nations had the power to bring an international claim against a non-Member State, also found that it had "objective international personality",[75] implying that the personality of the United Nations had effect not only for its members, but also for third States. While it was argued that such "objective international personality" appertained only to the United Nations, allowing non-Member States to refuse to recognize other international organizations,[76] recent practice indicates that other international organizations are also generally considered to possess such personality.[77] Nevertheless, formal or implied recognition, *e.g.* through the conclusion of treaties or the establishment of official relations, may serve as supporting evidence of the international legal personality of international organizations.[78]

(21) The existence of organs through which an international organization will perform the powers entrusted to it is usually easier to ascertain than the possession of international legal personality.

(22) In doctrine concerning international organizations, the correlation between the possession of organs and of international legal personality is sometimes regarded as a consequential one, in the sense that the possession of organs permitting an international organization to express an independent will result in its possession of international legal personality.[79] Others take the view that the two should be treated totally separate.[80] The present draft guideline 2, subparagraph (a), does not prejudge either position.

(23) Draft guideline 2, subparagraph (b) explaining the term "dispute" builds on the definition contained in the *Mavrommatis Palestine Concessions* judgment [81] and is sufficiently general to encompass legal disputes arising at the international level and under national law whether of a public or private law nature.

in Europe (OSCE). See Niels M. Blokker and Ramses A. Wessel, "Revisiting questions of organisationhood, legal personality and membership in the OSCE: the interplay between law, politics and practice", in Manteja Steinbrück Platise, Carolyn Moser and Anne Peters (eds.), *The Legal Framework of the OSCE* (Cambridge, Cambridge University Press, 2019), pp. 135–164.

[75] *Reparation for injuries suffered in the service of the United Nations* (see footnote 5 above), p. 185.

[76] See, *e.g.*, the Soviet Union's policy of non-recognition of the European Economic Community (EEC). Sands and Klein, *Bowett's Law of International Institutions* (footnote 46 above), p. 480; Schermers and Blokker, *International Institutional Law …* (see footnote 13 above), pp. 1238 et seq.

[77] See Akande, "International organizations", pp. 233–234 ("Thus, international organizations with a membership consisting of the vast majority of the international community possess objective international personality. However, it is important to note that the Court did not say that only such organizations possess objective personality and there are good reasons of practice and principle for concluding that the personality possessed by any international organization is objective and opposable to non-members. In practice, 'no recent instances are known of a non-member State refusing to acknowledge the personality of an organization on the ground that it was not a member State and had not given the organization specific recognition' (Amerasinghe, 2005, p 87)"); Crawford, *Brownlie's Principles of Public International Law* (see footnote 53 above), p. 160 ("Although the Court conditioned its opinion on the quantity and standing of the founding Members of the [United Nations], there are good reasons for applying this proposition to *all* international organizations, and in practice this has occurred").

[78] The practice at the United Nations of granting observer status to international organizations can be regarded as a recognition of the status of an entity as an international organization. See Miguel de Serpa Soares, "Responsibility of international organizations", in *Courses of the Summer School on Public International Law*, vol. 7 (Moscow, International and Comparative Law Research Center, 2022), p. 100.

[79] C.F. Amerasinghe, *Principles of the Institutional Law of International Organizations*, 2nd ed. (Cambridge, Cambridge University Press, 2005), pp. 10–11; August Reinisch, *International Organizations Before National Courts* (Cambridge, Cambridge University Press, 2000), p. 6.

[80] See Fernando Lusa Bordin, *The Analogy between States and International Organizations* (Cambridge, Cambridge University Press, 2018), pp. 72–79.

[81] *The Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J. Series A, No. 2, p. 7.

(24) Pursuant to the *Mavrommatis* definition, endorsed by the International Court of Justice in numerous cases,[82] a legal dispute is "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons".[83]

(25) The International Court of Justice further clarified that a mere "conflict of … interests" will not necessarily amount to a legal dispute, and that "[i]t must be shown that the claim of one party is positively opposed by the other".[84] Thus, the core element of the *Mavrommatis* definition, a disagreement on a point of law or fact, is coupled with the "opposition of views" which can be generally expressed by "claims" that are met with "refusal" in regard to legal points and "assertions" that are met by "denial" in regard to factual points.[85] Many national legal systems rely on similar concepts when defining "disputes".[86]

(26) As in the *Mavrommatis* definition, draft guideline 2, subparagraph (*b*), only refers to disagreements on a point of law or fact and not to mere policy disputes, although it is acknowledged by the Commission that legal disputes may have policy underpinnings. Likewise, the fact that a dispute may have political aspects does not deprive it of its legal character.[87]

(27) A disagreement on a point of fact will only amount to a legal dispute if the factual assertions and denials are relevant in a legal context, *i.e.* relate to a point of law.[88]

(28) Given that a dispute implies a disagreement and involves claims and assertions that are positively opposed, it is not necessary to include any reference to potential parties to a dispute. A dispute stems from the fact that at least two persons disagree. Since the topic refers to disputes to which international organizations are parties, it is evident that at least one party to the relevant disagreements will be an international organization. Being a party to a dispute is without prejudice to the question of whether an international organization can be a party

[82] See, e.g., *Interpretation of Peace Treaties, Advisory Opinion, I.C.J. Reports 1950*, p. 65, at p. 74; *Certain Property (Liechtenstein v. Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005*, p. 6, at p. 18, para. 24; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 6, at p. 40, para. 90; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007*, p. 659, at p. 700, para. 130.

[83] *The Mavrommatis Palestine Concessions* (see footnote 82 above), p. 11.

[84] See *e.g., South West Africa Cases* (*Ethiopia v. South Africa; Liberia v. South Africa*), Preliminary Objections, Judgment, *I.C.J. Reports 1962*, p. 319, at p. 328; *Certain Property (Liechtenstein v. Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005*, p. 6 at p. 18, para. 24 ("for the purposes of verifying the existence of a legal dispute it falls to the Court to determine whether 'the claim of one party is positively opposed by the other'"); *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections*, Judgment, *I.C.J. Reports 2016*, p. 3, at p. 26, para. 50 ("It does not matter which one of them advances a claim and which one opposes it. What matters is that 'the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain' international obligations) (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74)".

[85] See John Merrills and Eric De Brabandere, *Merrills' International Dispute Settlement*, 7th ed. (Cambridge, Cambridge University Press, 2022), p. 1 ("a specific disagreement concerning a matter of fact, law or policy in which a claim or assertion of one party is met with refusal, counter-claim or denial by another").

[86] Jeffrey Lehman and Shirelle Phelps (eds.), *West's Encyclopedia of American Law* vol. 3, 2nd ed. (Farmington Hills, Thomson Gale, 2005), p. 461 ("DISPUTE: A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other").

[87] See *United States Diplomatic and Consular Staff in Tehran*, Judgment, *I.C.J. Reports 1980*, p. 3, at p. 20, para. 37 ("legal disputes between sovereign States by their very nature are likely to occur in political contexts, and often form only one element in a wider and long-standing political dispute between the States concerned").

[88] See Article 36, para. 2 (c), of the Statute of the International Court of Justice ("the existence of any fact which, if established, would constitute a breach of an international obligation").

to specific legal proceedings on the international or national level.[89] In light of the broad scope of the present guidelines, as explained in the commentary to draft guideline 1 above, the other parties may be other international organizations, States, *sui generis* subjects of international law or private parties, including individuals or legal persons under national law, such as companies, associations or NGOs.

(29) Draft guideline 2, subparagraph (*c*), is inspired by Article 33 of the Charter of the United Nations.[90] It does not define dispute settlement. Rather, it lists the available means of dispute settlement in international and national law. This is also reflected by the use of the verb "refers" instead of "means". The guideline's wording follows closely the provision found in the Charter of the United Nations. Its broad formulation, including the open-ended element of "other peaceful means of resolving disputes", is meant to ensure that all potential means of dispute settlement both on the international as well as on the national level are covered.

(30) Article 33 of the Charter of the United Nations captures well the scope of possible settlement methods from purely *inter partes* attempts to settle a dispute, starting with negotiations, to increased involvement of non-disputing third parties, in the form of binding arbitration or adjudication.[91] As the International Court of Justice has held in its advisory opinion in *Reparation for Injuries*, these forms of dispute settlement are generally also available to international organizations.[92] Of course, especially in the case of arbitration and adjudication, the applicable jurisdictional requirements will have to be fulfilled in order to allow international organizations to sue or to be sued.

(31) In order to preserve all means referenced in Article 33, draft guideline 2, subparagraph (c), maintains the wording "resort to regional agencies or arrangements", although it is most likely that such resort would take the form of one of the other means of dispute settlement listed. To date, such resort appears to have been limited in practice, but it does not seem excluded that, in a specific situation, a subregional organization may be subject to dispute settlement under a regional arrangement.

(32) Draft guideline 2, subparagraph (*c*), contains only a list of available means and does not imply an order in which dispute settlement means have to be resorted to. This is also underlined by the fact that draft guideline 2, subparagraph (c), "refers to" these means and does not state that the parties to a dispute "shall … seek a solution by" resorting to them. Therefore, it is not necessary to keep the words "of their own choice" as contained in Article 33 of the Charter.

(33) The phrase "of their own choice" is also deliberately omitted because, in some situations, international organizations may be subject to specific dispute settlement obligations pursuant to their constituent instruments, headquarters agreements or private law contracts.[93]

(34) Because draft guideline 2, subparagraph (*c*), lists means of dispute settlement and does not contain an obligation to "seek a solution" of certain disputes, as Article 33 of the Charter does, it is also clear that such a provision, found in the draft guideline entitled, "Use of terms", cannot be understood to lead to an obligation to actually resolve a dispute.

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[89] Since international organizations cannot be parties before the International Court of Justice, some treaties provide that their disputes with States be settled through requesting an advisory opinion from the Court which the parties agree to accept as binding. See *e.g.* art. VIII, sect. 30, of the Convention on the Privileges and Immunities of the United Nations. Although not becoming parties to contentious proceedings before the Court international organizations are parties to the underlying disputes with States.

[90] Article 33 of the Charter of the United Nations ("The parties to any dispute, the continuance of 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 settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.").

[91] Christian Tomuschat, "Article 33", in Bruno Simma *et al.* (eds.), *The Charter of the United Nations: A Commentary* vol. II, 3rd ed. (Oxford, Oxford University Press, 2012), p. 1076, para. 23.

[92] *Reparation for injuries suffered in the service of the United Nations* (see footnote 5 above), p. 178.

[93] See para. (8) of the commentary to draft guideline 1 above.