

Provisional

**For participants only**

22 September 2023

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**International Law Commission**  
**Seventy-fourth session (second part)**

**Provisional summary record of the 3647th meeting**

Held at the Palais des Nations, Geneva, on Wednesday, 26 July 2023, at 3 p.m.


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Draft report of the Commission on the work of its seventy-fourth session (*continued*)

*Chapter V. Settlement of disputes to which international organizations are parties*

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***Present:***

*Chair:* Ms. Galvão Teles

*Members:* Mr. Akande  
Mr. Argüello Gómez  
Mr. Asada  
Mr. Cissé  
Mr. Fathalla  
Mr. Fife  
Mr. Forteau  
Mr. Grossman Guiloff  
Mr. Huang  
Mr. Jalloh  
Mr. Laraba  
Mr. Lee  
Ms. Mangklatanakul  
Mr. Mavroyiannis  
Mr. Mingashang  
Mr. Nesi  
Mr. Nguyen  
Ms. Okowa  
Ms. Oral  
Mr. Ouazzani Chahdi  
Mr. Oyarzábal  
Mr. Paparinskis  
Mr. Patel  
Mr. Reinisch  
Ms. Ridings  
Mr. Ruda Santolaria  
Mr. Sall  
Mr. Savadogo  
Mr. Tsend  
Mr. Vázquez-Bermúdez  
Mr. Zagaynov

***Secretariat:***

Mr. Llewellyn Secretary to the Commission

*The meeting was called to order at 3.10 p.m.*

**Draft report of the Commission on the work of its seventy-fourth session** (*continued*)

*Chapter V. Settlement of disputes to which international organizations are parties*  
([A/CN.4/L.977](#) and [A/CN.4/L.977/Add.1](#))

**The Chair** invited the Commission to resume its consideration of the draft report, starting with the portion of chapter V contained in document [A/CN.4/L.977](#).

A. *Introduction*

*Paragraphs 1 and 2*

*Paragraphs 1 and 2 were adopted.*

B. *Consideration of the topic at the present session*

*Paragraphs 3 to 5*

*Paragraphs 3 to 5 were adopted.*

*Paragraph 6*

*Paragraph 6 was adopted, subject to its completion by the secretariat.*

C. *Text of the draft guidelines on settlement of disputes to which international organizations are parties provisionally adopted by the Commission at its seventy-fourth session*

1. *Text of the draft guidelines*

*Paragraph 7*

**The Chair** recalled that the text of draft guidelines 1 and 2 had already been adopted; only the introductory sentence of paragraph 7 remained to be adopted.

*Paragraph 7 was adopted.*

**The Chair** invited the Commission to consider the portion of chapter V contained in document [A/CN.4/L.977/Add.1](#).

2. *Text of the draft guidelines and commentaries thereto provisionally adopted by the Commission at its seventy-fourth session*

*Paragraph 1*

*The introductory sentence of paragraph 1 was adopted.*

*Commentary to draft guideline 1 (Scope)*

*Paragraph (1)*

**Mr. Jalloh** said that the last sentence of the paragraph should be aligned with the second sentence of paragraph (1) of the commentary to draft guideline 2. It should therefore be rephrased to read: "These terms also contribute to delimiting the scope of the topic."

*Paragraph (1), as amended, was adopted.*

*Paragraph (2)*

**Mr. Paparinskis** said that if disputes arising under the rules of the organization, as defined in article 2 (b) of the articles on the responsibility of international organizations, fell within the scope of draft guideline 1, the following sentence should be added to the end of

paragraph (2): “Disputes with international organizations may also arise under the rules of the organization.”

*Paragraph (2), as amended, was adopted.*

*Paragraph (3)*

**Mr. Sall** said that, in the second sentence, it was inaccurate to suggest that the United Nations had been acting “on behalf of” its agents in *Reparation for injuries suffered in the service of the United Nations*, as it had in fact been acting on its own behalf. The sentence should therefore be reformulated to refer to international claims raised by international organizations for harm caused to their agents by a State.

**Mr. Reinisch** (Special Rapporteur) said that the phrase “on behalf of their agents injured by a State” should be changed to “for injuries suffered by their agents”.

**Mr. Ouazzani Chahdi** said that the full name of the advisory opinion should be given in the second sentence.

**The Chair** said that it was perhaps customary for the full name of the opinion to be given in a footnote and a short form to be used in the body of the document. The secretariat would be consulted on the matter.

*Paragraph (3), as amended, was adopted on that understanding.*

*Paragraph (4)*

*Paragraph (4) was adopted.*

*Paragraph (5)*

**Mr. Paparinskis** said that he would appreciate confirmation from the Special Rapporteur that the reference at the end of the paragraph to “an international organization’s internal administrative law” was meant to neither include nor exclude such law from the scope of the topic and that the question of its inclusion or exclusion remained open.

**Mr. Reinisch** (Special Rapporteur) said that disputes that might arise from the kinds of contracts referred to in the sentence were in no way excluded from the scope of the topic.

**Mr. Sall** said that, in the last sentence of the French version of paragraph (5), the phrase “*comme faisant partie du droit administratif interne*” should be replaced with “*relevant du droit administratif interne*”.

**Mr. Forteau** said that the references in the first sentence to “national”, “municipal”, “internal” and “domestic” law – with each adjective accompanied by a footnote containing citations unrelated to the topic at hand – were confusing and seemed to add little value to the commentary. The sentence should be simplified.

**Mr. Reinisch** (Special Rapporteur) said that he had included the four terms to signal to readers that the Commission had not referred to non-international law in a uniform way in its previous work. Each of the four adjectives had been used by the Commission in the past, and each footnote contained references to the outcomes of the Commission’s work in which the corresponding adjective had been used. If members thought it necessary, the four footnotes numbered 12 to 15 could be combined into a single footnote containing a description of the varying usage.

**Mr. Forteau** said that he would welcome such a consolidated footnote, which would be especially helpful to readers of the French text, as the French version of paragraph (5) indicated that only two adjectives – “*national*” and “*interne*” – had been used in French and then listed the various English adjectives.

**Mr. Jalloh** supported the Special Rapporteur’s proposal for a combined footnote.

**The Chair** said she took it that the Commission wished to leave paragraph (5) in abeyance pending the preparation of the footnote.

*It was so decided.*

*Paragraph (6)*

**Mr. Forteau** said that, while paragraph (6) referred only to the human rights obligation to provide access to justice, claims could arise for breaches by international organizations of other human rights obligations as well. A broad reference to human rights obligations was needed. The words “to provide for access to justice” should therefore be deleted.

**Mr. Oyarzábal** said that a separate reference to access to justice should be retained. Problems of access to justice did not relate solely to human rights obligations.

**Mr. Grossman Guiloff** said that the concerns of Mr. Forteau and Mr. Oyarzábal could be accommodated by replacing the words “to provide for access to justice” with “including access to justice”.

**Mr. Forteau** said that the obligation to provide for access to justice was indeed quite important in relation to the topic. As Mr. Oyarzábal had indicated, there were aspects of that obligation that went beyond human rights law: the obligation to provide for access to justice should therefore be separated from the reference to human rights obligations. A comma and the words “the obligation” should be inserted before “to provide for access to justice”.

**Mr. Jalloh** said he agreed that it was important to retain the references both to human rights obligations and access to justice.

**Mr. Grossman Guiloff** said that the Commission should avoid suggesting that the obligation to provide for access to justice was not an international obligation. The Commission could perhaps consider including a footnote to discuss the various aspects of access to justice, including equality before the law, compensation and financial assistance.

**Mr. Reinisch** (Special Rapporteur) said that he had focused on the human rights obligation to provide for access to justice in paragraph (6) because that particular obligation, like the other items mentioned in the paragraph, was relevant to the settlement of non-international disputes, primarily contractual or delictual/tort disputes. However, he was not opposed to including a broader reference to human rights obligations. He proposed that the phrase “human rights obligations to provide for access to justice” should be replaced with “human rights obligations, in particular the duty to provide for access to justice”.

*Paragraph (6), as amended, was adopted.*

*Paragraph (7)*

**Mr. Forteau** said that the statement in the second sentence, that the word “international” before “disputes” had been “deleted”, was incorrect, as that wording had not featured initially in any draft guideline adopted by the Commission – it only appeared in the draft guideline proposed by the Special Rapporteur. The first clause of the third sentence, “As a result of that change”, was also affected. He proposed that the second and third sentences should be amended by inserting, after “present draft guidelines”: “it has been decided not to include the word ‘international’ before ‘disputes’ in the present draft guideline. As a result of this decision, the Commission decided ...”.

**Mr. Reinisch** (Special Rapporteur) said that, as he understood it, the title of the topic had previously been “Settlement of international disputes to which international organizations are parties”; the Commission had decided at its 3631st meeting to delete the word “international” before “disputes” in the title.

**Ms. Mangklatanakul** said that, notably in the light of the wording of paragraph (2) of the commentary to draft guideline 1, it was not, as was stated in the first sentence of paragraph (7), difficult to make a distinction between international and non-international disputes. She therefore asked the Special Rapporteur to review the wording of that sentence. As to the deletion of the word “international”, the intention had, as she remembered it, been to ensure that all disputes arising from international organizations were covered.

**Mr. Akande** said that, as the word “international” had been deleted from the title of the topic, rather than the text of the draft guideline, the wording of paragraph (7) should be amended to indicate that explicitly.

**The Chair** said that the decision to delete the word “international” before “disputes” had been taken during the discussion on the scope of draft guideline 1, and only subsequently in respect of the title.

**Mr. Reinisch** (Special Rapporteur) said that, to better reflect the Commission’s decisions, he would amend the wording as proposed by Mr. Forteau.

**Mr. Paparinskis** said that it might be helpful in the commentary to draw on the language used in the statement by the Chair of the Drafting Committee to the Commission at its 3631st meeting concerning the complexities of distinguishing between national and international disputes: “It was also understood that the commentaries would clarify that national law issues pertaining, for example, to the competence of the judiciary, and questions that were governed exclusively by national law, were not included in the scope of the topic.”

**Mr. Reinisch** (Special Rapporteur) said that, although he was not opposed to the inclusion of the wording proposed, the Commission had agreed that the purpose of the Commission’s work on the topic was not to explore details of the functioning of national systems. Furthermore, in the light of Mr. Grossman Guiloff’s comments earlier in the meeting in respect of human rights obligations, he was reluctant to be specific about any aspects not covered by the draft guideline, as that might give rise to difficult discussions in the future.

**Mr. Jalloh** said that discussions that had already taken place during the meetings of the Drafting Committee should not be reopened.

**The Chair** said she was concerned that the wording from the report of the Chair of the Drafting Committee included aspects related more to private law disputes than to the scope of the draft guideline and thus might distract the Commission from the focus of its discussions. Therefore she did not think that the text proposed by Mr. Paparinskis should be incorporated into the paragraph. She took it that the Commission wished to adopt the paragraph with the amendments proposed by Mr. Forteau.

*Paragraph (7) was adopted with those amendments.*

*Paragraph (8)*

**Mr. Forteau** said that the words “See, by analogy” should be inserted at the beginning of footnote 25.

**Mr. Savadogo** said that there were documents other than those mentioned in the second sentence of paragraph (8) that laid out the obligations concerning the settlement of disputes to which international organizations could be subject; they included staff regulations and special agreements with the International Labour Organization Administrative Tribunal. For that reason, he suggested inserting the words “in particular” before “their constituent instruments” in the second sentence.

**Mr. Reinisch** (Special Rapporteur) said that he would prefer to insert “among others” before “their constituent instruments”. He was aware that there were many such documents and had intentionally chosen only a few examples. Regarding footnote 25, his intention had been to give illustrations from two different guides. He therefore proposed inserting only the word “See” at the beginning of the footnote.

*Paragraph (8) was adopted with those amendments.*

*Paragraph (9)*

**Ms. Okowa** said that, in the first sentence, the term “*vade mecum*”, which was not in common use and was unnecessary in the context, should be deleted.

**Mr. Nesi** said that the words in question formed part of a quotation and so should not be omitted.

**Mr. Oyarzábal** said that the word “toolbox” gave the idea that a choice could be made from a number of different options, which was not the case. The draft guideline was intended to show the direction to be taken.

**Mr. Forteau**, agreeing with Mr. Oyarzábal, said that the part of the sentence following the word “output” should be deleted.

**Mr. Akande**, supported by **Mr. Vázquez-Bermúdez**, said that the current wording gave the impression that nothing in the draft guidelines was binding, which might not be the case, as they could include references to actual rules of law. He therefore supported Mr. Forteau’s proposal.

**Mr. Jalloh**, noting that the Sixth Committee of the General Assembly had regularly called on the Commission to clarify its normative output, said that it would be helpful to include some explanation of the purpose of the draft guidelines. The reference in footnote 25 to the relatively recent Guide to Provisional Application of Treaties could usefully be moved to the body text, as could the text on the purpose of that guide.

**Mr. Forteau** said that, to meet the concerns expressed by Mr. Jalloh, part of footnote 25 could be moved to the first sentence of paragraph (9), after the words “the Commission’s output”.

**Mr. Reinisch** (Special Rapporteur) said he agreed that the clause in the first sentence containing the reference to the toolbox should be deleted. He suggested that the first part of footnote 25, up to the semicolon, should be retained as it was. The second part would be deleted, but the wording of the quotation would be moved to the first sentence of paragraph (9), which would thus read: “For this purpose, the elaboration of a set of draft guidelines appears to be the most suitable form for the Commission’s output, which is intended to direct States, international organizations and other users to answers that are consistent with existing rules or that seem most appropriate for contemporary practice.” The correct reference for the quotation would then be provided in a footnote.

*Paragraph (9) was adopted with those amendments.*

#### *Paragraph (10)*

**Mr. Forteau**, pointing out that footnote 27 referred not to a set of model clauses but to a list of provisions to be found in existing treaties, suggested that the footnote should be deleted; otherwise, the wording of the paragraph would need to be amended.

**Mr. Jalloh** said that the issue of whether to include model clauses or examples of existing provisions in the Guide to Provisional Application of Treaties had been debated during the Commission’s work on the corresponding topic, but it had proved impossible to develop model clauses in that instance. He would therefore prefer to see footnote 27 deleted, which would give the Special Rapporteur the flexibility to develop model clauses on the present topic.

**Mr. Grossman Guiloff** said that he too supported the deletion of footnote 27. He also suggested a minor drafting change to the Spanish version of the text.

**Mr. Reinisch** (Special Rapporteur) said that he agreed to delete footnote 27.

*Paragraph (10), as amended, was adopted, with a minor drafting change to the Spanish version.*

#### *Commentary to draft guideline 2 (Use of terms)*

**Mr. Forteau** suggested that, as the commentary to draft guideline 2 was long, it should be divided with subheadings corresponding to subparagraphs (a), (b) and (c) of the draft guideline, placed immediately before paragraphs (2), (23) and (29), respectively.

**Mr. Reinisch** (Special Rapporteur) and **Mr. Jalloh** welcomed that suggestion.

**The Chair** said she took it that the Commission agreed to insert subheadings in the form of “*Subparagraph (a)*” and so on, in line with its practice on other topics.

*It was so decided.*

*Paragraph (1)*

**Mr. Lee** said that the words “contains definitions”, used in the first sentence of paragraph (1), appeared to contradict the statement in paragraph (29) of the same commentary to the effect that subparagraph (c) did not define dispute settlement but rather listed the means of dispute settlement available in national and international law. He therefore suggested amending the sentence in question to read: “Draft guideline 2 provides for the use of three core terms found in draft guideline 1.”

**Mr. Forteau**, expressing support for that suggestion, said that the word “They” at the beginning of the second sentence in the English version of the text should be altered to “These definitions”, in line with the French version.

**Mr. Reinisch** (Special Rapporteur), noting that he had tried to follow existing practice where possible, said that both the commentaries to the Commission’s draft articles on the law of treaties between States and international organizations or between international organizations and the commentaries to its articles on the responsibility of international organizations referred to “definitions” in their respective sections on the use of terms. He had proceeded on the basis that “use of terms” provisions essentially involved defining terms for the purposes of a specific text; however, he acknowledged that subparagraph (c) was worded slightly differently. Some modification might therefore be required.

**Mr. Jalloh** suggested that the word “They” at the beginning of the second sentence be altered to “These terms” rather than “These definitions”.

**The Chair** said she took it that the Commission agreed to amend the first sentence of paragraph (1) as proposed by Mr. Lee and the second as suggested by Mr. Jalloh.

*Paragraph (1), as amended, was adopted.*

*Paragraph (2)*

*Paragraph (2) was adopted.*

*Paragraph (3)*

**Mr. Lee** said that the phrase “initially defined”, in the first sentence of paragraph (3), might suggest that definitions of “international organizations” were to be found in treaties predating the examples listed in the second sentence; altering the words “identical definitions” in that sentence to “some examples” might be clearer.

**Mr. Asada** said that he understood the first sentence of the paragraph to refer to the draft articles on the law of treaties adopted by the Commission, rather than to any of the instruments in which the same definition found therein had subsequently been used.

**Mr. Forteau** suggested that the issue could be resolved by amending the second sentence of the paragraph to begin “This definition was incorporated into ...”.

**Mr. Grossman Guiloff**, referring to the final sentence of paragraph (3), suggested that the words “the adequacy of” should be inserted before “merely identifying” and the word “questioned” changed to “raised”.

**Mr. Paparinskis** expressed support for the suggestion made by Mr. Forteau and further suggested that the words “several codification conventions such as” should be inserted before the list of treaties contained in the second sentence of the paragraph, in line with the wording of paragraph (3) of the commentary to article 2 of the articles on the responsibility of international organizations. He also suggested that the last sentence of the paragraph might be moved to the beginning of the next paragraph, perhaps with the word “However” deleted, thereby leaving paragraph (3) to describe the traditional practice and paragraph (4) to highlight the potential shortcomings thereof and the solution arrived at in the articles on the responsibility of international organizations.

**Mr. Asada** said that the concern expressed by Mr. Lee might be allayed by adding a phrase such as “in its draft articles of 1966 on the law of treaties” after the words “international organizations” in the first sentence of paragraph (3), with a footnote referencing the relevant passage in the *Yearbook of the International Law Commission, 1966*.



**Mr. Reinisch** (Special Rapporteur) said that the issue of chronology highlighted by Mr. Lee might be resolved either by listing the relevant outputs of the Commission's work in a footnote or by inserting wording to the effect that the definition could be found in a number of treaties that were based on the work of the Commission; however, providing a full list of the relevant outputs in addition to the existing list of treaties could prove cumbersome. He would hesitate to refer to "codification conventions", as suggested by Mr. Paparinskis, because the issue of whether customary law had in fact been codified in the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character had been controversial. He would therefore prefer to use the wording "This definition can be found in several conventions such as".

With regard to the last sentence of paragraph (3), he had no objection to the addition proposed by Mr. Grossman Guiloff but queried the grammatical correctness of simply changing the word "questioned" to "raised". Altering Mr. Grossman Guiloff's proposed wording from "the adequacy of merely identifying" to "the question of the adequacy of merely identifying" as well might solve the problem. For the overall sense of the passage, he would prefer to retain the word "However", though he had no strong preference as to the placement of the sentence.

**The Chair** said she took it that the Commission agreed to amend the first sentence of the paragraph as suggested by Mr. Asada; to alter the second sentence to begin "This definition can be found in several conventions such as"; and to amend the final sentence, which would remain in paragraph (3), to read: "However, the question of the adequacy of merely identifying 'international organizations' as 'intergovernmental organizations', without further defining them, was raised within the Commission."

*Paragraph (3), as amended, was adopted.*

*Paragraph (4)*

**Mr. Forteau** said that, throughout the paragraph, the present tense should be used to describe the definition of the term "international organization" contained in the Commission's articles on the responsibility of international organizations. It was misleading to use the past tense to describe a definition that continued to exist.

**Ms. Okowa** said that, in the seventh sentence, it would be useful if a footnote could be added to provide evidence in support of the statement that, "in addition to States, other entities might become members of international organizations". The footnote marker could be placed at the end of that sentence. Although a similar statement could also be found in the indented quotation, no examples of such "other entities" were provided either in the text of the paragraph or in the existing footnotes.

**Mr. Grossman Guiloff** proposed that, in the same sentence, the word "might" should be replaced with "may in some cases" in order to more accurately reflect the content of treaties establishing international organizations.

**Mr. Lee** said that the second half of the sixth sentence, beginning with the word "although", was somewhat misleading. The fact that the Commission's articles on the responsibility of international organizations contained a definition of the term "organ" did not necessarily indicate that organs were "integral features of international organizations". Moreover, in the commentaries to those articles, the Commission had devoted relatively little attention to the matter.

**Mr. Forteau** said that one way of addressing Mr. Lee's concern would be to delete the words "which indicates that organs are integral features of international organizations".

**Mr. Reinisch** (Special Rapporteur) said that paragraphs (3) and (4) of the commentary were intended to outline two definitions of the term "international organization" that had been formulated in the past. Paragraph (4) addressed the definition contained in the Commission's articles on the responsibility of international organizations. It made sense to use the past tense to describe the Commission's previous work and the present to set out the Commission's current interpretation of that work. Paragraph (8) of the commentary addressed the question of the "other entities" that could become members of international organizations. If necessary, a new footnote could be added to the paragraph under

consideration to provide a cross reference to paragraph (8). He would not object to Mr. Grossman Guiloff's proposal, although it seemed unnecessary to replace the word "might" with "may in certain circumstances", as "might" already expressed a possibility. He would prefer to retain the words "which indicates that organs are integral features of international organizations". Although the word "indicates" did not imply definitive proof, it could be replaced with "appears to indicate" if it was considered insufficiently cautious.

**Mr. Forteau** said that the use of the past tense in the paragraph under consideration gave the impression that the definition of the term "international organization" contained in draft guideline 2 (a) superseded the definition contained in the Commission's articles on the responsibility of international organizations. As the latter definition had not in fact been superseded, it made more sense to use the present tense to describe it. The relationship between the two definitions had been discussed in the Drafting Committee, with several members expressing a preference for the definition adopted in 2011. Moreover, in the second sentence of paragraph (3) of the commentary, the words "can be found" – not "were to be found" – were used to refer to other definitions of the same term.

**Ms. Ridings** said that the use of the past tense was appropriate in paragraphs (3) and (4), which contained descriptions of the Commission's previous work. Another way of addressing Mr. Forteau's concern might be to replace the words "This definition emphasized" at the beginning of the sentence immediately following the indented quotation with "The use of this definition emphasized".

**The Chair** said that an alternative would be to replace the same words, "This definition emphasized", with "In this definition, the Commission emphasized". Such wording would establish the context in which the remainder of the paragraph was to be read. There seemed to be agreement that the words "which indicates" in the sixth sentence should be replaced with "which appears to indicate"; that a new footnote should be added to provide a cross reference to paragraph (8) of the commentary; and that the corresponding footnote marker should be placed at the end of the seventh sentence.

*Paragraph (4), as amended, was adopted.*

*Paragraph (5)*

**Mr. Savadogo** said that the first sentence would be clearer if reformulated to read: "Most international organizations are established by agreements, whatever their particular designation: treaties, conventions, charters, constitutions, statutes, or articles of agreement." [*La plupart des organisations internationales sont instituées par accords, quelle que soit leur dénomination particulière: traités, conventions, chartes, constitutions, statuts et pactes.*] In the third sentence, the United Nations Conference on Trade and Development could be cited as an example of an international organization established by a resolution.

**Ms. Mangklatanakul** said that the Association of Southeast Asian Nations (ASEAN) could be mentioned as a further example. Although ASEAN had not been transformed into an international organization until 2008, it had arguably already been operating as one, *de facto*, for several decades. It had constituted a loose regional arrangement by which the participating States had been able to express their collective will, enter into agreements and engage with others, which had created a context in which disputes could arise. It could be explained, either in the text of the paragraph or in a footnote, that ASEAN had been established pursuant to the Bangkok Declaration and had been transformed into an international organization pursuant to the ASEAN Charter.

**Mr. Sall** said that the list of plural nouns included in the first sentence gave the impression that each of its constituent items had a clear and distinct meaning. However, the intention was clearly to convey the idea that, as recalled in the 1969 Vienna Convention on the Law of Treaties, States could use whatever designation they wished to refer to the agreements that they concluded. An alternative to Mr. Savadogo's proposal would be to change all the nouns in that list from the plural to the singular.

*The meeting rose at 6 p.m.*