

Translated from French

Preliminary information in response to the questionnaire on the topic “Settlement of international disputes to which international organizations are parties”

In response to the invitation addressed by the Office of Legal Affairs of the Secretariat of the United Nations to Member States to submit contributions of relevance to the future work on the topic “Settlement of international disputes to which international organizations are parties”, which was recently added to the programme of work of the International Law Commission, as noted in the report of the Commission’s seventy-third session, the Kingdom of Morocco wishes to indicate that it has taken note of the project and, in response to the questionnaire sent to States, wishes to share the following information with the Commission.

- It is immediately clear that this new topic will require reflection from Member States to enrich and inform the Commission’s future work on State practice. It seems obvious that the examination of international organizations as subjects of international law in the context of dispute settlement will be a central element of this work.
- In terms of methodology, the nature of the questions in the questionnaire raises a concern in that what might apply to an international organization might not necessarily apply to a State (see questions 1 and 8). Instead of this one-size-fits-all approach, the questions should have been tailored to the respondent, meaning that two separate questionnaires should have been developed.
- At a purely substantive level, it is stated in the questionnaire document that certain disputes of a private law character “often raise public international law issues, such as immunity from jurisdiction, access to justice, or diplomatic protection”. This could have been explained a bit more explicitly in order to provide a better understanding of the issue, albeit at a preliminary stage.

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

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

- As two distinct types of subject of international law, States and international organizations establish relations with each other in a variety of legal forms (constituent instruments of international organizations, agreements on privileges and immunities, cooperation and partnership agreements, headquarters agreements, etc.). The most frequently used is still a headquarters agreement. This is a type of instrument by which an international organization and one of its member States agree on the rules applicable to the establishment of the permanent headquarters or a regional office of the international organization in the territory of the host country. It is clear that disputes may arise in such situations. For this reason, the legal means by which any legal disputes between the two parties shall be addressed is invariably provided for in the headquarters agreement, in a specific provision on the settlement of disputes.
- The Kingdom of Morocco, which unquestionably favours the peaceful settlement of disputes, including those arising from the application or interpretation of a headquarters agreement, does not deviate from this international trend in its relevant treaty practice; it continues to give priority to negotiation, diplomatic exchanges and, where necessary, recourse to international arbitration, in accordance with the terms jointly agreed by the two parties.
- Treaty practice between Morocco and international organizations in the area of headquarters agreements is characterized by diplomatic exchanges, periodic or regular cooperation and amicable dispute settlement. The letter and the spirit of such agreements establish clear parameters for the relations between the Government of Morocco and the international organization in question, namely: (1) cooperation between the two parties at all times and without preconditions; (2) continuous communication between the two parties within the framework of the institutional mechanisms for evaluating and monitoring the implementation of the agreement; and (3) amicable settlement of all disputes through negotiation or, failing that, international arbitration.
- Disputes between an international organization and the Government of Morocco – which are few in number, or even non-existent, especially in the last two decades – must be settled using the mechanisms established in principle in the normative instrument binding the two parties (the constituent instrument of the organizations, a headquarters agreement or another agreement), using the preferred modes of settlement, as explained in the preceding paragraph.
- In addition to that category of disputes, an international organization in Moroccan territory could be faced with disputes of an entirely different nature, between it and a different type of

legal subject (natural or legal persons, i.e. employees, service providers, or victims of acts or injuries caused by the international organization).

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

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

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