

ILC Questionnaire relating to “Settlement of international disputes to which international organizations are parties”

The United Nations Office of Legal Affairs notes that the ILC questionnaire has also been sent to the Funds and Programmes of the United Nations. The following answers focus on disputes involving the United Nations Secretariat that are handled by the Office of Legal Affairs. They also take into account disputes involving the Funds and Programmes to the extent that they are referred to the United Nations Office of Legal Affairs.¹

1. What types of disputes/issues (cf. paras. 6 and 7 above) have you encountered?

Disputes between International Organizations:

1. International organizations routinely cooperate with one another, often based on appropriate contractual or administrative arrangements, including memoranda of understanding. Issues that arise in the implementation of such arrangements are dealt with amicably and through mutual consultations. The Office of Legal Affairs is not aware of formal dispute settlement proceedings initiated between the United Nations and other international organizations resulting from a divergence of views or interests in connection with such cooperation.

Disputes between the United Nations and States:

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

Disputes between the United Nations and private parties:

3. The United Nations has encountered the two types of disputes referred to in section 29 (a) of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946 (“General Convention”), pursuant to which the Organization is to make provisions for appropriate modes of settlement of (i) disputes arising out of contracts or (ii) other disputes of a private law character to which the United Nations is a party.
4. In practice, the first type typically arises out of contracts with private parties. These comprise, for the most part, contracts with commercial vendors, but also with individuals of the following categories of non-staff personnel: consultants or individual contractors

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

engaged for the provision of specific services for projects of limited duration,² and UN Volunteers.³

5. The second type of dispute may arise from tort or delict claims of a private law character by third parties for personal injury, illness or death, and for property loss or damage (including non-consensual use of premises), resulting from or attributable to the activities of members of peace operations in the performance of their official duties.⁴ They also arise out of similar third party claims for injury, illness, death, loss or damage sustained at United Nations Headquarters.⁵ In addition, claims of intellectual property infringement have occasionally been brought against the United Nations arising from the Organization's use of third-party owned materials without appropriate licences.

2. What methods of dispute settlement (cf. para. 9 above) have been resorted to in cases of disputes with other international organizations, states or private parties? Please provide any relevant case law, or a representative sample thereof. If you cannot provide such information for confidentiality reasons, could you provide any such decisions or awards in redacted form, or a generic description/digest of such decisions?

6. In so far as international legal disputes between the United Nations and other international organizations are concerned: please see the answer to Q1 above.

Disputes between the United Nations and States:

7. In so far as international legal disputes between the United Nations and States are concerned, the method of settlement that has typically been employed is negotiation. While a considerable number of the agreements to which the United Nations is party contemplate the use of third-party means of settlement, in particular the establishment of arbitral tribunals,⁶ The Office of Legal Affairs is aware of only a few cases in which steps have been taken, either by the United Nations or by a State party, to initiate arbitration, and does not have knowledge of cases in which arbitration has actually taken place with respect to such disputes.⁷
8. Section 30 of the General Convention identifies the means through which disputes concerning the Convention, including the privileges and immunities it accords, should be resolved. Disputes under the Convention shall be referred to the International Court of Justice (ICJ), unless it is agreed by both parties to use another mode of settlement. If a difference arises between the United Nations and a Member State, a request shall be made for an advisory opinion from the ICJ. While advisory opinions are non-binding, the opinion

² See Administrative instruction: Consultants and individual contractors, [ST/AI/2013/4](#), 19 December 2013, Sections 1 and 2.

³ Other categories of non-staff personnel, whose contracts do not provide for arbitration with the United Nations, do not fall within the scope of the answers to this questionnaire: see Report of the Secretary-General on the administration of justice at the United Nations ([A/72/204](#)), annex II, section A.

⁴ See Report of the Secretary-General on administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations ([A/51/903](#)), dated 21 May 1997, paras. 13-14. See also General Assembly resolution [52/247](#) of 26 June 1998.

⁵ General Assembly resolution [41/210](#) of 11 December 1986.

⁶ See Question 9 below.

⁷ In one case involving a United Nations entity, an arbitration was initiated against a Member State in 1985 and an arbitration panel constituted through the Permanent Court of Arbitration, but the claim was subsequently withdrawn and the arbitration proceedings terminated accordingly.

of the Court “shall be accepted as decisive by the parties”. The United Nations has sought an advisory opinion from the ICJ regarding the application of the General Convention on two occasions, in the *Cumaraswamy*⁸ and *Mazilu*⁹ cases, each in relation to differences with a Member State regarding the immunity of an expert on mission for the United Nations.

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

Section 21

(a) Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice.

(b) The Secretary-General or the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.¹⁰

10. In the practice of the United Nations since the Headquarters Agreement was concluded in 1947, issues concerning the interpretation or application of the Agreement have almost exclusively been addressed through discussions with the United States Government without invocation of its dispute resolution mechanism. In 1988, the Secretary-General invoked section 21 of the Agreement with respect to United States legislation that would make unlawful the establishment or maintenance within the United States of any office of the Palestine Liberation Organization (PLO), including its Observer Mission to the United Nations in New York.
11. During the discussions between the Secretary-General and the United States Government on ensuring that the PLO Observer Mission would not be affected by the legislation, the Government maintained that a dispute did not exist, as the 90-day period for the entry into force of the legislation had not expired. On the basis of reports by the Secretary-General on these discussions and the impending entry into force of the legislation, the General Assembly adopted a resolution requesting, in accordance with Article 96 of the Charter, an advisory opinion of the ICJ on the following question: “In the light of the facts reflected in the reports of the Secretary-General, is the United State of America, as a party to the Headquarters Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, under an obligation to enter into arbitration in accordance with section 21 of the Agreement?” The Court held that it was.

⁸ *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion of 29 April 1999, (1999) ICJ Rep 62.

⁹ *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, Advisory Opinion, 13 June 1989, (1989) ICJ Rep 177.

¹⁰ Agreement regarding the Headquarters of the United Nations, signed at Lake Success, on 26 June 1947, and approved by the General Assembly of the United Nations, on 31 October 1947, with an Exchange of Notes, dated 21 November 1947, bringing this Agreement into effect, United Nations, *Treaty Series*, vol. 11 (1947), p. 11 (No. 147).

In parallel, the PLO Mission initiated legal proceedings against the United States Government in a Federal District Court in New York, supported by amicus curiae briefs filed by the United Nations. The Court held that United States law did not require closure of the PLO Observer Mission as the Mission is covered by the Headquarters Agreement and that the Agreement remains a valid treaty obligation of the United States as it has not been superseded by the legislation in question. Accordingly, no further action was taken under section 21 of the Headquarters Agreement.

12. With respect to disputes between the United Nations and States involving any official of the United Nations who by reason of his/her official position enjoys immunity and whose immunity has not been waived by the Secretary-General,¹¹ the policy and practice of the Organization described in the report of the Secretary-General on the procedures in place for the implementation of Article VIII of the General Convention remains applicable:

“30. [I]f a claim is against an official for acts performed in the course of his or her official functions, the Organization will inform the claimant that the action is against the Organization itself and then the normal procedures for dispute resolution set out [in the report] should apply. It is only if an act relates to private activities of the official that the issue of waiver is examined.

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

32. Consideration of cases relating to disputes referred to above has generally been delegated by the Secretary-General to the Office of Legal Affairs. Most of these cases are either traffic accidents or domestic disputes. In the case of traffic accidents, the matter is handled by the appropriate insurance company which, if it cannot settle the case, will appear in court to defend the claim. In the case of domestic disputes, immunity is usually waived. It should be noted, however, that the Secretary-General has discretionary authority, under section 20 of the General Convention, to consider in any case whether the immunity of any United Nations official would impede the course of justice and whether it can be waived without prejudice to the interests of the Organization. As noted above, in the great majority of cases reported to the Office of Legal Affairs, immunity has been waived. In a few cases, however, the Organization has not waived immunity but has cooperated with the competent authorities, on a strictly voluntary basis, by providing, for example, the necessary information with a view to assisting the authorities in the proper administration of justice and preventing the occurrence of any abuse of the privileges and immunities.”¹²

¹¹ Section 29 (b) of the General Convention makes reference to disputes involving any official of the United Nations who by reason of his/her official position enjoys immunity, if immunity has not been waived by the Secretary-General.

¹² Report of the Secretary-General on procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (A/C.5/49/65), paras. 30 to 32. See also Study of the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities that was prepared by the Secretariat of the United Nations for the International Law Commission in 1967, Yearbook of the International Law Commission, 1967, vol. II p. 296, at para. 386.

Disputes between the United Nations and private parties:

13. The United Nations enjoys immunity from legal process by virtue of Article 105 of its Charter and Article II, Section 2 of the General Convention. It is in that context that Article VIII, Section 29 of the General Convention requires the United Nations to make provisions for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character.¹³
14. Consistent with Article VIII, Section 29 (a) of the General Convention, the United Nations makes a distinction between claims of a private law character and claims of a public law character. The latter category of claims falls outside the scope of Article VIII, Section 29 of the General Convention. Those include, for instance, claims made against the United Nations in relation to the exercise of its constitutional functions. Thus, the Secretary-General stated in his report to the General Assembly in 1995 that “the Organization does not agree to engage in litigation or arbitration with the numerous third parties that submit claims ... based on political or policy-related grievances against the United Nations, usually related to actions or decisions taken by the Security Council or the General Assembly in respect of certain matters”.¹⁴
15. When determining whether a claim is of a private law character and thus falls within the scope of Article VIII, Section 29 of the General Convention, the United Nations assesses the nature of and the circumstances in which the alleged act or omission occurred and not merely the nature of the alleged conduct as described in the claim. A claim alleging tortious or delictual conduct, for example, does not automatically make it one of a private law character.
16. One category of private law claims that the UN has encountered are disputes arising of contracts with private parties. The United Nations makes provision in its commercial contracts for recourse to arbitration in the event of disputes that cannot be settled amicably.¹⁵ Since 1996, when the General Assembly took note of them,¹⁶ it has been the accepted practice to resolve such disputes by *ad hoc* arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL”).¹⁷ Likewise, disputes arising from contracts with consultants and individual contractors that cannot be settled amicably have been resolved by arbitration under the UNCITRAL Arbitration Rules, as reflected in their standard form contracts.¹⁸ Standard clauses are provided below (see Q9). In addition, UN Volunteers whose contracts are administrated by the United Nations Volunteers programme may, as reflected in their Conditions of Service,

¹³ See Question 1 above.

¹⁴ Report of the Secretary-General on procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 ([A/C.5/49/65](#)), para. 23.

¹⁵ *Ibid.*, para. 3.

¹⁶ *Ibid.*, para. 4. See General Assembly decision 50/503 of 17 September 1996, taking note of the practice, on the recommendation of the Fifth Committee, at *Official Records of the General Assembly, Fiftieth Session, Supplement No. 49 (A/50/49 (vol. II))*, p. 53.

¹⁷ See General Assembly resolution [31/98](#) of 15 December 1976 recommending its use.

¹⁸ See Administrative instruction: Consultants and individual contractors, [ST/AI/2013/4](#), 19 December 2013, annex I: General Conditions of Contracts for the Services of Consultants and Individual Contractors, section 16.

contest final administrative and disciplinary decisions made by resorting to arbitration under a tailored procedure to be conducted under the UNCITRAL Arbitration Rules.¹⁹

17. The United Nations has also encountered tort or delict claims for personal injury or property damage. As noted above (see Q1), such claims often arise in the context of United Nations peace operations in the field. These third-party claims brought against United Nations peace operations, if of a private law character, are typically reviewed by “Local Claims Review Boards”, which are United Nations administrative panels. Consideration of such claims is subject to temporal and financial limitations established by the General Assembly in its resolution [52/247](#) of 26 June 1998.²⁰ The Office of Legal Affairs is aware of instances where claims filed by third parties with the United Nations were settled between the United Nations and the relevant Government on behalf of the third parties.²¹
18. Where third-party tort claims arise at United Nations Headquarters in New York, as mentioned under Q1 above, the Organization’s liability is governed by Headquarters Regulation No. 4,²² adopted by the General Assembly pursuant to the Headquarters Agreement of 1947 between the United Nations and the United States of America.²³ This regulation limits the amount of compensation payable by the Organization for third-party claims arising from death, personal injury or illness or damage or loss to property arising from acts or omissions by the United Nations at its Headquarters. Such claims have been resolved in accordance with an internal review procedure promulgated by the Secretary-General.²⁴ If a claim by a third-party is considered justifiable and warrants compensation, the Organization seeks an amicable settlement.²⁵ Failing this, the third-party claimant will

¹⁹ See the prior [Conditions of Service for international UN Volunteers \(effective 1 March 2015\)](#), section 18.2 and appendix X (setting out the arbitration procedure), under which international UN Volunteers may contest the final administrative or disciplinary decisions issued by the UNDP Administrator by a request for arbitration to be submitted to the Office of Legal Affairs. These have been superseded by the [Unified Conditions of Service for UN Volunteers \(version 1.1. effect 14 November 2022\)](#), section XVII.6, under which UN Volunteers may contest such decisions by a request for arbitration to be submitted to the UNDP Administrator and the UNV Executive Coordinator.

²⁰ The Organization’s model status-of-forces agreement (Model SOFA) of 1990 and SOFAs and many SOMAs concluded since that date provide for such disputes to be settled by a standing claims commission. However, there is no available record of such a commission having ever been established in practice: see Q9 below.

²¹ This was the case with respect to claims lodged by Belgian nationals with the United Nations for damage to persons and property arising from the operations of the United Nations Operation in the Congo (ONUC), particularly those which took place in Katanga. The United Nations agreed that the claims of Belgian nationals who might have suffered damage as a result of harmful acts committed by ONUC personnel, not arising from military necessity, should be dealt with in an equitable manner. Following consultations with the Belgian Government and the assessment of the claims, the Secretary-General agreed to pay to the Belgian Government one million five hundred thousand United States dollars in lump-sum and final settlement of all claims (excluding those involving military necessity). See Exchange of Letters constituting an agreement between the United Nations and Belgium relating to the settlement of claims filed against the United Nations in the Congo by Belgian nationals (New York, 20 February 1965), United Nations, *Treaty Series*, vol. 535, p. 197.

²² General Assembly resolution [41/210](#) of 11 December 1986. See Report of the Secretary-General on procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 ([A/C.5/49/65](#)), dated 24 April 1995, paras. 11-12.

²³ *Supra* fn. 10, see section 8.

²⁴ See Report of the Secretary-General on procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 ([A/C.5/49/65](#)), para. 12 (which referred to the Secretary-General’s Bulletin on resolution of tort claims ([ST/SGB/230](#)) dated 8 March 1989, which was later abolished with effect from 1 January 2018, as the Tort Claims Board established under the Bulletin was no longer active; see the Secretary-General’s Bulletin on Abolishment of obsolete Secretary-General Bulletins ([ST/SGB/2017/3](#)) dated 27 December 2017).

²⁵ *Ibid.*; see Secretary-General’s Bulletin on resolution of tort claims ([ST/SGB/230](#)), para. 3.

be offered the option to submit the claim to arbitration in accordance with the UNCITRAL Arbitration Rules.²⁶ In practice, as far as the Office of Legal Affairs is aware, all such disputes have been resolved by amicable settlement without the need to resort to arbitration.

19. Due to confidentiality considerations and limitations, the United Nations is only able to provide generic information on case law. In general, arbitration proceedings have been initiated against the Organization by commercial vendors providing goods or services in support of United Nations peace operations, as a result of disputes arising from the following types of contracts: leases, air charter, transportation by land or sea, delivery of ground and aviation fuel and food rations and related logistics support services, and construction projects. The disputed issues have mainly related to contract performance, interpretation and termination. A few arbitrations have arisen from challenges to the Organization's decisions in public tenders, one involved a claim in tort (damage to property) and defamation and there have been some others initiated by UN Volunteers contesting disciplinary sanctions or seeking damages for service-incurred injury. Depending on their complexity, the disputed amounts and issues, the disputes have been adjudicated either by three-member tribunals or by sole arbitrators.

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

20. In so far as international legal disputes between the United Nations and States are concerned, please see the answer to Q2 above.

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

22. Only a small number of disputes arising from commercial contracts (relative to their overall high volume) have been escalated to arbitration. The majority of such cases have arisen from complex contractual arrangements between the United Nations and commercial vendors providing logistical support to the Organization's peace operations, including the provision of fuel, food rations and catering services, transport services (by air, land and sea) and construction projects. A few arbitrations have arisen from challenges or claims in other contexts, as indicated in Q2 above.

23. Similarly, as far as the Office of Legal Affairs is aware, disputes arising out of the Organization's contracts with consultants, individual contractors and UN Volunteers have led to arbitration only in a very small number of cases.²⁷ Most cases have been settled amicably.

²⁶ *Ibid.*, para 6.

²⁷ Arbitration under the UNCITRAL Arbitration Rules has been the formal resolution mechanism for these disputes, as these categories of personnel do not have access to the Organization's internal system of administration of justice. For consultants and individual contractors, arbitration is provided under the United Nations General

24. The 2017 Secretary-General's Report on the Administration of Justice sets out a comprehensive analysis of disputes involving non-staff personnel, including individual contractors and consultants, for the United Nations system.²⁸ The United Nations continues to assert its privileges and immunities, including immunity from legal process, through the relevant Government in cases where claims invoking domestic labour law are filed before national courts against the United Nations and proceed contrary to the privileges and immunities accorded to the United Nations.

4. Which methods of dispute settlement do you consider to be most useful? Please indicate the preferred methods of dispute settlement (cf. para. 9 above) for different types of disputes/issues (cf. paras. 6 and 7 above).

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

26. Disputes involving non-staff personnel have also been successfully resolved by mediation with the involvement of the Office of the United Nations Ombudsman and Mediation Services.²⁹

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

27. In its first 40 years, the United Nations primarily settled its contractual disputes amicably. As far as the Office of Legal Affairs is aware, before the 1990s, the United Nations, including its Funds and Programmes, was rarely involved in arbitration.³⁰

28. Since the mid-1990s, there has been an upward trend in disputes with commercial vendors involving the United Nations. Many such disputes have been resolved amicably without the need for arbitration. Nonetheless, there has been a rise in arbitrations involving the United Nations, largely due to "the difficulties that arose with the sudden exponential growth in peacekeeping activities in the late 1980s and early 1990s, and the switch from traditional

Conditions of Contracts for the Services of Consultants and Individual Contractors ([ST/AI/2013/4, annex I](#)). For UN Volunteers, a formal recourse procedure is provided under the [Unified Conditions of Service for UN Volunteers \(version 1.1, effect 14 November 2022\)](#), section XVII.5, under which UN Volunteers may contest administrative or disciplinary decisions by requesting a review by the UNV Executive Coordinator, with a further review by the UNDP Administrator, before requesting arbitration.

²⁸ Report of the Secretary-General on *Administration of justice at the United Nations*, A/72/204 of 24 July 2017, [Annex II](#).

²⁹ See <https://www.un.org/ombudsman/>.

³⁰ For example, there was an arbitration involving the United Nations Operation in the Congo (ONUC) in the late 1960s (*Starways Limited v. United Nations: Decision of the arbitrator dated 24 September 1969*, 1969 United Nations Juridical Yearbook ([ST/LEG/SER.C/7](#)) at pp. 233-234) and a number of arbitrations (one arising from a bidding challenge and another from a lease) during the 1980s.

reliance on Member State Governments for the provision of a wide range of support services to the use of commercial vendors”.³¹ Over the past three decades, around 40 arbitrations were initiated by commercial vendors in which the Office of Legal Affairs acted as counsel for the United Nations, of which approximately 30 percent involved United Nations Funds and Programmes. As mentioned above (see Q2), the majority arose from complex contractual arrangements between the United Nations and vendors providing logistical support to peacekeeping operations.

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

29. In response to requests by the General Assembly to improve the remedies available to non-staff personnel,³² the Office of Legal Affairs has been working on simplifying and streamlining the dispute resolution procedure available to consultants and individual contractors, based on the UNCITRAL Expedited Arbitration Rules recommended by the General Assembly in 2021,³³ with the aim of making the process less time-consuming and costly.³⁴ The Office of Legal Affairs notes that the engagement of the Permanent Court of Arbitration, as an independent and neutral entity to provide support services in arbitrations involving the United Nations and consultants and individual contractors, is also under consideration.³⁵

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

30. A response to this question will, in the first, instance, depend on the definition of “available dispute settlement methods”. A broad definition, such as that provisionally adopted by the Drafting Committee of the International Law Commission, would include “negotiations, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of solving disputes”.³⁶ Any dispute involving international organizations will involve considerable and extended efforts to resolve them by negotiations and possibly mediation and conciliation, prior to engaging in more formal processes, such as arbitration or referral to the ICJ, as and where applicable. Most dispute settlement methods referred to will not have limitations in scope.

31. Dispute resolution under Article VIII, Section 29 (a) of the General Convention is expressly limited to disputes arising out of contracts and other disputes of a private law character.

³¹ Report by the Secretary-General on procurement-related arbitration ([A/54/458](#)), para. 5.

³² General Assembly resolution [73/276](#) of 22 December 2018.

³³ General Assembly resolution [76/108](#) of 9 December 2021. See Report of the United Nations Commission on International Trade Law on the work of its fifty-fourth session (28 June-16 July 2021), *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17* ([A/76/17](#)), para. 189, and annex IV containing the text of the Expedited Arbitration Rules.

³⁴ Report of the Secretary-General on administration of justice at the United Nations ([A/77/156](#)), para. 114.

³⁵ *Ibid.*, paras. 115-116.

³⁶ Settlement of international disputes to which international organizations are parties: Titles and texts of draft guidelines 1 and 2 provisionally adopted by the Drafting Committee (A/CN.4/L.983), draft guideline 2(c).

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

32. See answer to Q2 above.

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

United Nations contracts with private parties:

33. The United Nations uses a standard dispute settlement clause in both its commercial contracts as well as its contracts with consultants and individual contractors, providing for amicable settlement and *ad hoc* arbitration under the UNCITRAL Arbitration Rules. The United Nations also includes a standard clause on privileges and immunities, which follows the dispute settlement clause.

34. For contracts with commercial vendors, the United Nations General Conditions of Contracts for the Provision of Goods and Services³⁷ provide as follows:

17. SETTLEMENT OF DISPUTES:

17.1 AMICABLE SETTLEMENT: The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (“UNCITRAL”), or according to such other procedure as may be agreed between the Parties in writing.

17.2 ARBITRATION: Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 17.1, above, within sixty (60) days after receipt by one Party of the other Party’s written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 (“Interim measures”) and Article 34 (“Form and effect of the award”) of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

³⁷ Available at

https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/general_condition_goods_services.pdf.

18. **PRIVILEGES AND IMMUNITIES:** Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

35. For contracts with consultants and individual contractors, the United Nations General Conditions of Contracts for the Services of Consultants and Individual Contractors³⁸ provide as follows:

16. Settlement of disputes

Amicable settlement. The United Nations and the contractor shall use their best efforts to amicably settle any dispute, controversy or claim arising out of the contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (UNCITRAL), or according to such other procedure as may be agreed between the parties in writing.

Arbitration. Any dispute, controversy or claim between the parties arising out of the contract, or the breach, termination or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate then prevailing, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim.

17. Privileges and immunities

Nothing in or relating to the contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

36. While the model amicable settlement clause provides for the option of conciliation under the UNCITRAL Conciliation Rules (1980),³⁹ use of that method of dispute settlement is entirely dependent upon the agreement of the parties. As far as the Office of Legal Affairs is aware, that option has been invoked only rarely.⁴⁰
37. Further, there are certain distinguishing features of international commercial arbitration involving the United Nations, given the Organization's privileges and immunities. In particular, the standard United Nations contract is governed by its own terms and not by any national law, whether substantive or procedural. In this regard, the standard clauses above provide that the arbitral tribunal shall apply general principles of international commercial law in its interpretation of the parties' rights and obligations under the contract (which, depending on the issue, may include the UNIDROIT principles of international commercial contracts). Further, the United Nations takes the position that its arbitrations are delocalized in nature, without a seat of arbitration that would entail its submission to the

³⁸ Available at [ST/AI/2013/4](#).

³⁹ See General Assembly resolution [35/52](#) of 4 December 1980 recommending its use.

⁴⁰ Report by the Secretary-General on procurement-related arbitration ([A/54/458](#)), para. 34.

jurisdiction of national courts or the application of any local procedural law, which would be inconsistent with the Organization's privileges and immunities.⁴¹

38. It should be noted that the above model clauses are currently under revision.
39. Similarly, where the United Nations enters into separate arbitration agreements (see Q11 below), it typically includes provisions to protect its legitimate interests, depending on the circumstances of the particular case, such as provisions clearly defining and circumscribing the issues to be adjudicated, provisions specifying that the arbitrators are to apply internationally accepted principles of international commercial law rather than the law of a particular national legal system, provisions regulating the scope of discovery that may be ordered by the arbitrators, and provisions preserving the privileges and immunities of the United Nations.⁴²

United Nations agreements with Member States or International Organizations:

40. In agreements with Governments of Member States,⁴³ the United Nations typically includes the following dispute resolution clause (or a similar clause with appropriate adjustments depending on the nature of the agreement):

Any dispute between the United Nations and the Government relating to the interpretation and application of the present Agreement which is not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairperson. If within thirty (30) days of the request for arbitration either Party has not appointed an arbitrator, or if within fifteen (15) days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure for the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

41. Such agreements may alternatively provide that the parties shall settle any dispute arising from the agreement through amicable negotiation. Whether to include the above-referenced clause or the amicable settlement clause in such agreements depends on the subject matter of the agreements concerned. For example, in a financial contribution agreement with a Member State Government, the amicable settlement clause may be sufficient, if the donor Government would not be involved in the implementation of the funded project.
42. In the context of peacekeeping operations, the model Memorandum of Understanding between the United Nations and a Member State Government contributing resources to a

⁴¹ See Report of the United Nations Commission on International Trade Law on the work of its forty-third session (21 June-9 July 2010), *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 96, clarifying the practice regarding the seat of arbitration in the context of the drafting of the 2010 UNCITRAL Arbitration Rules.

⁴² Note by the Secretariat dated 6 February 2002 on preparation of uniform provisions on written form for arbitration agreements ([A/CN.9/WG.II/WP.118](#)), para. 17 (see para. 7 of the excerpted letter from the Director of the General Legal Division of the Office of Legal Affairs dated 23 May 2001).

⁴³ Where such agreements have been registered and published under Article 102 of the Charter, they are available on the [website of the United Nations Treaty Collection](#) and may be retrieved using "ICJ Clause – appointment" as a search function.

United Nations peacekeeping operation includes a dispute settlement clause that provides for amicable settlement and arbitration under Article 13:⁴⁴

13.1 [United Nations peacekeeping operation] shall establish a mechanism within the mission to discuss and resolve, amicably by negotiation in a spirit of cooperation, differences arising from the application of this memorandum of understanding. This mechanism shall be comprised of two levels of dispute resolution:

(a) First level: The Director/Chief of Mission Support, in consultation with the Force Commander and the Contingent Commander, will attempt to reach a negotiated settlement of the dispute;

(b) Second level: Should negotiations at the first level not resolve the dispute, a representative of the Permanent Mission of the Member State and the Under Secretary-General for Operational Support, or his or her representative, shall, at the request of either Party, attempt to reach a negotiated settlement of the dispute.

13.2 Disputes that have not been resolved as provided in paragraph 13.1 above may be submitted to a mutually agreed conciliator or mediator appointed by the President of the International Court of Justice, failing which the dispute may be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the Chair. If, within 30 days of the request for arbitration, either Party has not appointed an arbitrator or if, within 30 days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedures for the arbitration shall be fixed by the arbitrators, and each Party shall bear its own expenses. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute. The arbitrators shall have no authority to award interest or punitive damages.

43. With respect to third-party claims of a private law character, paragraph 51 of the Organization's model status-of-forces agreement (Model SOFA) of 1990 provides for the following means of settlement:

51. Except as provided in paragraph 53, any dispute or claim of a private law character to which the United Nations peace-keeping operation or any member thereof is a party and over which the courts of [host country/territory] do not have jurisdiction because of any provision of the present Agreement, shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final and binding, unless the Secretary-General of the United Nations and the Government permit an appeal to a tribunal established in accordance with paragraph 53. The awards of the commission shall be notified to the parties and, if against a member of

⁴⁴ Letter dated 31 August 2020 from the Secretary-General to the President of the General Assembly, transmitting the 2020 edition of the Manual on Policies and Procedures concerning the Reimbursement and Control of Contingent-Owned Equipment of Troop/Police Contributors Participating in Peacekeeping Missions ([A/75/121](#)), pp. 203-204. Report of the Secretary-General on model status-of-forces agreement for peacekeeping operations ([A/45/594](#), p. 13).

the United Nations peace-keeping operation, the Special Representative/Commander or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

44. This provision has been included in all of the SOFAs for the Organization's peacekeeping operations that have been concluded since the Model SOFA was issued.
45. It has also been included in the SOMAs that the Organization has concluded for the larger Cluster III special political missions that have been established over the past decade-and-a-half.
46. The Model SOFA also makes provision for the possibility of appeals from decisions of the standing claims commission and for a means to settle them: see further paragraph 50, below.
47. A standing claims commission, as envisaged in the Model SOFA and SOFAs and many SOMAs concluded since that date, has never been established in the practice of United Nations peacekeeping operations or of the Organization's special political missions. It is nevertheless the practice of the Secretary-General to continue to seek to include provision for one in its SOFAs and in the SOMAs for its larger special political missions, and States hosting the Organization's peacekeeping operations and such special political missions continue to agree to this.⁴⁵
48. Regarding disputes concerning the terms of employment and conditions of service of locally recruited personnel, paragraph 52 of the Model SOFA provides as follows:
52. Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the administrative procedures to be established by the Special Representative/Commander.
49. Notwithstanding minor adjustments to reflect the structure of the UN operation or mission, this provision has been reproduced in all the SOFAs that the Organization has concluded since the issuance of the Model SOFA, with two of these agreements expanding slightly on the provisions of the Model.⁴⁶ Likewise, many of the SOMAs that have been concluded

⁴⁵ In his Report on administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations ([A/51/903, at paras. 8-11](#)), the Secretary-General explained why the Organization's SOFA continued nevertheless to include the provision from the Model SOFA on standing claims commission: "*There is, therefore, no acquired operational experience against which the effectiveness or ineffectiveness of such a procedure can be judged. This may have been the result of a lack of political interest on the part of host States, or because the claimants themselves may have found the existing procedure of local claims review boards [on which, see Q2 above] expeditious, impartial and generally satisfactory. But whatever the reason, the very fact of not invoking the procedure provided for under the model agreement, in itself, is not an indication that the procedure is inherently unrealistic or ineffective. ... [The Secretary-General] is also of the view that the standing claims commission envisaged in article 51 of the model agreement should be maintained, mainly because it provides for a tripartite procedure for the settlement of disputes, in which both the Organization and the claimant are treated on a par. The mechanism also reflects the practice of the Organization in resolving disputes of a private law character under article 29 of the Convention on the Privileges and Immunities of the United Nations. The local claims review boards, just and efficient as they may be, are United Nations bodies, in which the Organization, rightly or wrongly, may be perceived as acting as a judge in its own case. Based on the principle that justice should not only be done but also be seen to be done, a procedure that involves a neutral third party should be retained in the text of the status-of-forces agreement as an option for potential claimants.*"

⁴⁶ The two agreements signed in 2012 by the United Nations and, respectively, the Government of Sudan, and the Government of the Republic of South Sudan concerning the status of the United Nations Interim Security Force in Abyei, both expanded on the provision from paragraph 52 of the Model SOFA and read as follows:

over the past decade-and-a-half for the larger of the Organization's Cluster III special political missions have also included this provision.⁴⁷

50. In so far as concerns disputes between its peacekeeping operations and the Governments of States hosting those operations, the United Nations Model SOFA⁴⁸ contains the following provisions for their settlement:

53. Any other⁴⁹ dispute between the United Nations peace-keeping operation and the Government, and any appeal that both of them agree to allow from the award of the claims commission established pursuant to paragraph 51⁵⁰ shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, *mutatis mutandis*, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

54. All differences between the United Nations and the Government of [host country/territory] arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention [on the Privileges and Immunities of the United Nations] shall be dealt with in accordance with the procedure of section 30 of the Convention.⁵¹

51. These two paragraphs were reproduced verbatim in the SOFAs that were negotiated for those peacekeeping operations that were established in the years immediately following the issuance of the model agreement.⁵² The second paragraph was omitted, however, where the host country was not at the time a party to the General Convention.⁵³

56. Disputes concerning the terms of employment and conditions of service of locally recruited staff members shall be settled by the administrative procedures to be established by the Force Commander (Head of UNISFA), in accordance with the relevant provisions of the United Nations Staff Regulations and Rules then in force. Disputes concerning the terms of service of other personnel engaged locally, such as individual contractors, shall be settled in accordance with the terms specified in their contracts, including arbitration where applicable.

⁴⁷ UNMIN, UNIOGBIS, UNSMIL, UNPOS. In the case of BNUB and MENUB, the words "in conformity with the principles provided for in General Assembly resolution 62/253 of 24 December 2008" were added at the end. The agreements for several missions (UNSOM, BINUH, UNITAMS) are formulated differently: "All disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled in accordance the regulations and rules of the United Nations." The agreements for the UN Mission in Colombia and the UN Verification Mission in Colombia provide as follows: "Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the regulations, rules and procedures of the United Nations."

⁴⁸ A/45/594, Annex.

⁴⁹ These two paragraphs appear immediately following paragraphs 51 and 52 relating to modes of settlement for disputes concerning, respectively, (i) third party claims and (ii) the terms of employment and conditions of service of locally recruited personnel. See above for the relevant two paragraphs.

⁵⁰ See above for the wording of paragraph 51.

⁵¹ End-note i/ in the Model SOFA reads as follows: "In case the other party to the present Agreement is a party to the Convention."

⁵² UNAMIR, UNMIH (subsequently applied *mutatis mutandis* to MIPONU, UNTMIH and UNSMIH), UNPREDEP, UNAVEM III (subsequently applied *mutatis mutandis* to MONUA) and UNCRO (subsequently extended to include UNTAES). For historical reasons, the two paragraphs were also included many years later in the agreement with Cyprus for UNIFIL. The SOFA for UNTAC dealt with possible appeals from decisions of the claims commission somewhat differently, as follows:

48. Any appeal that UNTAC and [the Supreme National Council of Cambodia] agree to allow from the award of the claims commission established pursuant to paragraph 47 shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, *mutatis mutandis*, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

⁵³ ONUMOZ. The second paragraph was also omitted from the agreement for UNPROFOR with BiH.

52. These two paragraphs were, again, reproduced verbatim⁵⁴ in the SOFAs that were negotiated for the peacekeeping operations that were established in the years between 1996 and 2004, but with the omission of the reference to the possibility of appeals from awards of the claims commission.⁵⁵ Again, the second of the two paragraphs was omitted where the host country concerned was not party at the time to the General Convention.⁵⁶

53. In the case of peacekeeping operations established between 2005 and the present date, wording was added to the first sentence of the first of the two paragraphs in order to make submission of a dispute to arbitration dependent on the fact that it had not been possible for the parties to settle it by negotiation. All the agreements concerned thus contain the following two paragraphs:⁵⁷

All other disputes between [the peacekeeping operation] and the Government concerning the interpretation or application of the present Agreement that are not settled by negotiation shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, mutatis mutandis, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

All differences between the United Nations and the Government arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention shall be dealt with in accordance with the procedure set out in Section 30 of the Convention.

54. In recent years, identical provisions have appeared in agreements concluded with host countries regarding the status of the larger of the Organization's Cluster III special political missions.⁵⁸

55. Lastly, in its agreements with other international intergovernmental organizations, the United Nations includes a dispute resolution clause that contains, depending on the subject

⁵⁴ Or with minor changes in wording (the omission of the word "other" from the first sentence of the first of the two paragraphs; or with the phrase "any other dispute" changed to "all other disputes").

⁵⁵ MINURCA, MINURSO (Algeria and Morocco), UNAMSIL, UNMEE (Ethiopia), UNMISSET (also applied mutatis mutandis to UNOTIL and UNMIT), UNMIL, MONUC (now MONUSCO; also applied mutatis mutandis to ONUB military and civil police personnel temporarily deployed to the DRC), UNOCI, MINUSTAH (and some years later, MINUJUSTH) and ONUB.

⁵⁶ MINURSO (Mauritania).

⁵⁷ See the SOFAs for UNMIS, UNAMID, UNMISS, UNISFA (Sudan and South Sudan), MINUSMA and MINUSCA. (In the case of UNAMID, reference to the AU is included, alongside the United Nations, in the second of the two paragraphs, the AU being a party to the agreement.) The first of the two paragraphs appears in substance in the SOFAs that were concluded for MINURCAT with the CAR and Chad. Since the paragraph relating to the establishment of a claims commission for third party claims was omitted, it was necessary there to set out in full the procedure for the establishment and operation of the arbitral tribunal.

⁵⁸ Thus, the wording that appears in the most recent SOFAs appears in the SOMAs for UNSMIL, UNPOS, UNSOM, the UN Mission in Colombia and UN Verification Mission in Colombia; and, without the second of the two paragraphs, in the agreements for UNMIN and UNIOGBIS (Guinea-Bissau was not at the time a party to the Convention on the Privileges and Immunities of the United Nations, though Nepal was). For historical reasons, the pertinent provisions of the SOMAs for BINUH and for BNUB (which was later applied mutatis mutandis to BINUB) are the same as those of the SOFAs for MINUSTAH and ONUB, respectively. The agreements for UNIOSIL and, later, UNIPSIL applied the SOFA for UNAMSIL mutatis mutandis to those two missions; likewise, the agreement for UNOTIL applied the UNMISSET SOFA mutatis mutandis. The agreements for BINUCA and MENUB contain a paragraph identical to that in the agreements for MINURCAT, together with the standard second paragraph from the model SOFA.

matter of the agreement, an amicable settlement clause and a clause on arbitration, similar to the provisions quoted above.

10. Does “other disputes of a private law character” (see 8) above) encompass all disputes other than those arising from contracts? If not, which categories are not included? What has been the practice of your organization in determining this? What methods of settlement have been used for “other disputes of a private law character” and what has been regarded as the applicable law?

56. Dispute resolution under Section 29(a) of the General Convention is limited to claims of a private law character. As referred to in the response to Q2 at paragraph 14,⁵⁹ there is a category of claims, which can be described as claims of a public law character, which would fall outside the scope of Section 29 and for which the United Nations is not under an obligation by virtue of that Section to provide for a mode of settlement to third party claimants. On a number of occasions, the United Nations has determined that it would not be under an obligation to provide for a mode of settlement to third party claimants or that certain claims for damage were excluded.⁶⁰

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

57. The Office of Legal Affairs is not aware of cases to date where the United Nations has agreed ex post facto to the use of such a third-party method of settling a dispute of a public international law character with a State or international organization.

58. The United Nations has agreed ex post facto to arbitration of disputes of a private law character arising in situations where no contractual dispute settlement has been provided for, and where other means of settling such disputes provided by General Assembly resolutions [41/210](#) and [52/247](#) do not apply (see Q2 above). As far as the Office of Legal Affairs is aware, in such cases, which in practice has happened rarely, the United Nations enters into a separate arbitration agreement, which is tailored to the dispute and consistent with the features of the standard/model clauses (see Q9 above).⁶¹

59. Generally, the Organization has not developed a practice of waiving immunity for purposes of pursuing remedies before judicial authorities in the absence of other modes of settlement.

⁵⁹ See also Report of the Secretary-General on procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 ([A/C.5/49/65](#)), para. 23.

⁶⁰ For example, when settling claims of damage lodged by Belgian nationals with respect to ONUC in 1965, claims found to be solely due to military operations or military necessity, as well as claims for damage found to have been caused by persons other than United Nations personnel were excluded. See Study of the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities that was prepared by the Secretariat of the United Nations for the International Law Commission in 1967, Yearbook of the International Law Commission, 1967, vol. II p. 219, at paras. 54 and 56.

⁶¹ See also Note by the Secretariat dated 6 February 2002 on preparation of uniform provisions on written form for arbitration agreements ([A/CN.9/WG. II/WP.118](#)).

Whether or not the Secretary-General is in a position to waive immunity (from legal process) is a matter to be assessed in accordance with the General Convention and the criteria set out therein. Section 20 of the General Convention provides that the “Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his [or her] opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations”. Section 23 provides similarly with respect to experts on mission for the United Nations.

60. The determination whether immunity applies and if so, whether it can be waived without prejudice to the interests of the Organization, will typically precede the activation or outcome of any dispute resolution mechanism, such as under Article VIII, Section 29 of the General Convention. Failure to arrive at a resolution under this or any other mechanism does not, as such, alter the basis on which immunity applies and the criteria for assessing whether immunity, as applicable, ought to be waived. In isolated and exceptional cases, immunity has been waived for purposes of pursuing enforcement of arbitral awards.
61. Where the assertion of immunity itself becomes a matter of contention between the Organization and Member States, this may give rise to dispute resolution under Article VIII, Section 30 of the General Convention.

Office of Legal Affairs, 8 August 2023