

## **Replies to the Questionnaire relating to “Settlement of international disputes to which international organizations are parties”**

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

To date, WIPO has not encountered any types of disputes/issues with other international organizations or States.

With respect to private parties, the only type of disputes/ issues encountered by WIPO concerns labour disputes with its staff members (WIPO has never faced contractual disputes with service providers or other procurement related disputes).

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?

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

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

The case law of the ILOAT is available at: <https://www.ilo.org/tribunal/lang--en/index.htm>. As at the 134th session in July 2022, the ILOAT had issued 154 Judgments involving WIPO since 1983. The cases covered various topics such as appointments (type, length, and termination), entitlements and benefits, service-incurred illness, performance management, harassment, whistleblower protection, and disciplinary measures.

However, staff members are strongly encouraged to try to resolve workplace disputes through informal channels. This includes mediation by WIPO's Ombudsperson, the Human Resources Management Department, a higher-level supervisor (in case of a dispute over performance for instance), or any other available informal conflict resolution mechanism (Conflict Prevention Relays, WIPO internal coaches, WIPO Staff Council).

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

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.

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

The Ombudsperson is a neutral interlocutor, who mediates in conflicts between individual staff members or with management towards reaching amicable solutions to workplace-related difficulties. The Ombudsperson plays a role in preventing conflict and restoring peaceful working relations, and offers an important in-house alternative to formal complaint-handling. The aim of the Office of the Ombudsperson is to provide assistance towards resolving these conflicts as early as possible, in an informal and constructive manner. Early and collaborative approaches to addressing conflict contribute to a respectful, harmonious and productive working environment and promote good working relations, which are key conditions for organizational and operational efficiency.

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

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

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).

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

In addition to the information provided in the answer to the previous question, informal conflict resolution is often viewed as quicker, less stressful, and more effective than the formal procedure. The formal procedure is more appropriate when the dispute concerns a purely legal matter (such as the interpretation of a written provision).

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?

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

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

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

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

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

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

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

As noted above, WIPO has put in place a fair, independent, transparent, and robust internal justice mechanism, which includes formal and informal conflict resolution mechanisms, with a large number of trained and experienced actors. The current system largely stems from a comprehensive reform undertaken in 2014 and at this stage, no amendment, or adaptation, is deemed necessary.

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

No.

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

Yes. As a specialized agency of the UN, WIPO has the duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character pursuant to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (Article IX, Section 31).

In practice, this requirement is met by WIPO through the systematic inclusion in contractual arrangements with third parties – other than with its staff members – of a dispute settlement clause requiring the Parties to refer any dispute to Arbitration in accordance with the UNCITRAL Arbitration Rules.

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

Yes. WIPO's Standard/model clause regarding dispute settlement with third parties reads as follows:

*"The Parties shall use their best efforts to amicably settle any dispute arising out of the Contract. If not settled amicably within sixty days after receipt by one Party of the other Party's written request for such amicable settlement, the dispute may be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then in force. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English or French. The decisions of the arbitral tribunal shall be based on the terms and conditions of this Contract and its annexes and, where further reference is required, on the general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages and no authority to award interest in excess of the United States Federal Reserve Bank of New York Secured Overnight Financing Rate (SOFR) then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of such a dispute".*

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?

Yes. The term "other disputes of a private law character" is understood to refer to tort action / liability and encompass therefore all disputes other than those arising from contracts. As previously indicated, no dispute based on tort law has ever been encountered by WIPO to date.

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

No.